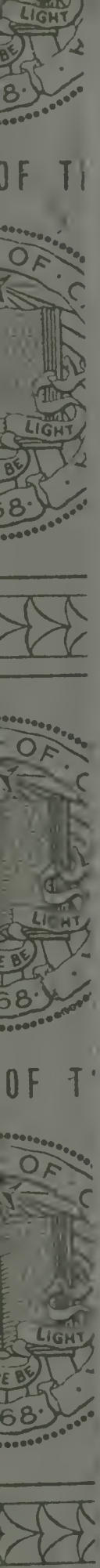
UC-NRLF
$B 195 793

OF THE UNIVERSITY OF CALIFORNIA
LIBRARY OF THE UNIVERSITY OF CALIFORNIA
LIBRARY OF
OF THE UNIVERSITY OF CALIFORNIA
LIBRARY OF THE UNIVERSITY OF CALIFORNIA
LIBRARY OF

LIBRARY OF THE UNIVERSITY OF CALIFORNIA


LIGHT
LIGHT
LIGHT
LIGHT

Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

http://www.archive.org/details/manualofparliame00jeffrich

A

MANUAL

OF

PARLIAMENTARY PRACTICE,

COMPOSED ORIGINALLY

FOR THE USE OF

THE SENATE OF THE UNITED STATES.

BY THOMAS JEFFERSON.

WITH REFERENCES TO THE PRACTICE AND RULES OF THE

HOUSE OF REPRESENTATIVES.

The whole brought down to the practice of the present time; to which are added

THE RULES AND ORDERS OF BOTH HOUSES OF CONGRESS.

PHILADELPHIA:
HOGAN & THOMPSON.
PITTSBURGH—D. M. HOGAN.
1834.

JK1091
J3
1834

9809

Entered according to Act of Congress, in the year 1834, by Hogan and Thompson, in the Clerk's Office of the Eastern District of Pennsylvania.

MR. JEFFERSON'S PREFACE.

THE Constitution of the United States, establishing a legislature for the Union under certain forms, authorizes each branch of it "to determine the rules of its own proceedings." The Senate have accordingly formed some rules for its own government: but those going only to few cases, they have referred to the decision of their President, without debate and without appeal, all questions of order arising either under their own rules, or, where they have provided none. This places under the discretion of the President a very extensive field of decision, and one which, irregularly exercised, would have a powerful effect on the proceedings and determinations of the House. The President must feel weightily and seriously this confidence in his

discretion; and the necessity of recurring, for its government, to some known system of rules, that he may neither leave himself free to indulge caprice or passion, nor open to the imputation of them. But to what system of rules is he to recur, as supplementary to those of the Senate? To this there can be but one answer; to the systems of regulations adopted for the government of some one of the Parliamentary bodies within these States, or of that which has served as a prototype to most of them. This last is the model which we have all studied; while we are little acquainted with the modifications of it in our several States. It is deposited, too, in publications possessed by many, and open to all. Its rules are probably as wisely constructed for governing the debates of a considerative body, and obtaining its true sense, as any which can become known to us; and the acquiescence of the Senate hitherto under the references to them, has given them the sanction of their approbation.

Considering, therefore, the law of proceedings in the Senate as composed of the precepts

of the Constitution, the regulations of the Senate, and where these are silent, of the rules of Parliament, I have here endeavoured to collect and digest so much of these as is called for in ordinary practice, collating the Parliamentary with the Senatorial rules, both where they agree and where they vary. I have done this, as well to have them at hand for my own government, as to deposite with the Senate the standard by which I judge and am willing to be judged. I could not doubt the necessity of quoting the sources of my information; among which, Mr. Hatsel's most valuable book is pre-eminent; but as he has only treated some general heads, I have been obliged to recur to other authorities, in support of a number of common rules of practice to which his plan did not descend. Sometimes each authority cited supports the whole passage. Sometimes it rests on all taken together. Sometimes the authority goes only to a part of the text, the residue being inferred from known rules and principles. For some of the most familiar forms, no written authority is, or can be quoted; no writer having supposed it necessary to repeat what all were

presumed to know. The statement of these must rest on their notoriety.

I am aware, that authorities can often be produced in opposition to the rules which I lay down as Parliamentary. An attention to dates will generally remove their weight. The proceedings of Parliament in ancient times, and for a long while, were crude, multiform, and embarrassing. They have been, however, constantly advancing towards uniformity and accuracy; and have now obtained a degree of aptitude to their object, beyond which little is to be desired or expected.

Yet I am far from the presumption of believing, that I may not have mistaken the Parliamentary practice in some cases; and especially in those minor forms, which being practised daily, are supposed known to every body, and therefore have not been committed to writing. Our resources, in this quarter of the globe, for obtaining information on that part of the subject, are not perfect. But I have begun a sketch, which those who come after me will succes-

sively correct and fill up, till a code of rules shall be formed for the use of the Senate, the effects of which may be accuracy in business, economy of time, order, uniformity, and impartiality.

NOTE.—The rules and practices peculiar to both the Senate and House of Representatives, are printed in smaller type.

TABLE OF CONTENTS.

Sec.		*Page.*
1.	Rules, importance of,	17
2.	Legislature,	18
3.	Privilege,	19
4.	Elections,	23
5.	Qualifications,	29
6.	Quorum,	32
7.	Call of the House,	32
8.	Absence,	33
9.	Speaker,	34
10.	Address,	35
11.	Committees,	36
12.	Committee of the Whole,	38
13.	Examination before committees, &c.	41
14.	Arrangement of business,	43
15.	Order,	45
16.	" respecting papers,	46
17.	" in debate,	47
18.	Orders of the House,	56
19.	Petitions,	58

Sec.		*Page.*
20.	Motions,	59
21.	Resolutions,	61
22.	Bills, Reading,	61
23.	" Leave to bring in,	62
24.	" 1st. reading,	63
25.	" 2d. reading,	66
26.	" Commitment,	64
27.	" Report of committee,	70
28.	" Re-commitment,	71
29.	" Report taken up,	71
30.	" Quasi-committee,	72
31.	" 2d reading in the House,	75
32.	" Reading papers,	78
33.	" Privileged questions,	79
34.	" Previous question,	90
35.	" Amendments,	94
36.	" Division of question,	99
37.	" Co-existing question,	102
38.	" Equivalent questions,	103
39.	" The question,	105
40.	" 3d reading,	106
41.	" Division of the House,	109
42.	" Title,	115
43.	Re-consideration,	116
44.	Bills sent to the other House,	119

Sec.		*Page.*
45.	Amendments between the Houses,	120
46.	Conferences,	123
47.	Messages,	126
48.	Assent,	129
49.	Journals,	131
50.	Adjournment,	134
51.	Session,	135
52.	Treaties,	138
53.	Impeachment,	141
	Rules and Orders of the Senate,	149
	Rules and Orders of the House,	162
	Joint Rules and Orders,	188

INDEX.

	Sec.
Absence,	8. 6
Address,	10
Adhere,	45. 38
Adjournment,	50. 33
Agree,	45. 38
Amendments,	35. 29. 40
Amendments between the Houses,	45. 38
Arrangement of business,	14
Assent, President's,	48
Bills, leave to bring in,	23
" readings,	22
" 1st reading,	24
" 2d reading,	25. 31
" 3d reading,	40
" commitment,	26. 30
" re-commitment,	28
" title,	42
" sent to other House,	44
" assent to,	48
Blank, filling,	33. 40
Brief,	40
Business, arrangement of,	14
Call of the House,	7
Chairman,	11, 12
Co-existing questions,	37
Commissioners,	51
Commitment,	26. 40
Committee,	11. 51. 30
" revised,	27

	Sec.
Committee of the whole,	12
" quasi,	32
" examination before,	13
" report of,	27
" joint,	11
Conferences,	49
Congress,	2
Counsel,	13
Counting the House,	6. 18. 41
Debate, order in,	17
Disagree,	45. 38
Discontinuance,	51. 33
Dissolution,	51
Division of the House,	41. 9
Division of a question,	36
Documents communicated,	44
Elections,	7. 4
Enquiry instituted,	13
Equivalent questions,	38
Evidence, communication of,	44
Examination before committee, &c.	13
Houses, call of,	7
" counted,	6. 18. 14
" division of,	41
" orders of,	18
" bills sent to or from,	44
" amendments between,	45
" conference between,	46
" messages between,	47
" joint committee of,	11
Impeachment,	53
Insist,	45. 38
Joint committee,	11
Journals,	49. 6
Jurisdiction of Congress,	2
Leave to bring in bill,	23
Legislature,	2

	Sec.
Lie on table,	33
Messages,	47. 12
Mistakes corrected,	6. 11. 44. 47. 49
Motions,	20
Motion withdrawn,	33
Order,	15
" respecting papers,	16
" in debate,	17
Orders of the day,	33
" of the House,	18. 21
Papers, order respecting,	16
" reading,	33. 32
Passage of bill,	40
Petitions,	19
Postponement,	33
President, his assent,	48
" may adjourn,	50
" call Congress,	51
" make treaties,	52
" inform Congress,	10
President of Senate,	9
President pro tem.	9
Previous question,	34
Privilege,	8. 33. 11
Privileged questions,	33
Prorogation,	51
Quasi-committee,	30
Qualification,	5
Question, the,	39
" previous,	34
" privileged,	33
Question, division of,	36
" co-existing,	38
" equivalent,	38
" same,	43
Quorum,	6. 12. 41

	Sec.
Reading, 1st,	24
" 2d,	31. 25
" 3d,	40
Reading papers,	33. 32
Readings,	22
Recede,	45. 38
Re-commitment,	28
Re-consideration,	43. 48
Remonstrance,	19
Report of committee,	27
Report taken up,	29
Resolutions,	21
Revival of committee,	27
Rules, importance of,	1
Rider,	40
Sergeant,	3. 8. 18
Session,	51
Speaker,	9
Speaker, pro tem.	9
Table, lie on,	33
Title,	42
Treaties,	52
Vote,	3
" changed,	41
" disallowed,	17
Witnesses,	13
Words, disorderly,	3
Yeas and Nays,	41

MANUAL

OF

PARLIAMENTARY PRACTICE.

IMPORTANCE OF RULES.

SECTION I.

THE IMPORTANCE OF ADHERING TO RULES.

Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say "it was a maxim he had often heard when he was a young man, from old and experienced members, that nothing tended more to throw power into the hands of Administration and those who acted with the majority of the House of Commons, than a neglect of, or departure from, the rules of proceeding: that these forms, as instituted by our ancestors, operated as a check, and control, on the actions of the majority; and that they were, in many instances, a shelter and protection to the minority, against the attempts of power."

So far the maxim is certainly true, and is founded in good sense, that as it is always in the

power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power, are the forms and rules of proceeding, which have been adopted as they were found necessary from time to time, and are become the law of the House; by a strict adherence to which, the weaker party can only be protected from those irregularities and abuses, which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities. —2 *Hats.* 171, 172.

And whether these forms be in all cases the most rational or not, is really not of so great importance. It is much more material that there should be a rule to go by, than what that rule is; that there may be an uniformity of proceeding in business, not subject to the caprice of the Speaker, or captiousness of the members. It is very material, that order, decency, and regularity, be preserved in a dignified public body.—2 *Hats.* 149.

SECTION II.

LEGISLATURE.

All Legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.—*Constitution of the United States, Article I. Section* 1.

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States.—*Const. U. S. Art. I. Sec.* 6.

For the powers of Congress, see the following Articles and Sections of the Constitution of the United States.—Art. I. Sec. 4, 7, 8, 9,—Art. II. Sec. 1, 2.—Art. III. Sec. 3.—Art. IV. Sec. 1, 3, 5.—And all the Amendments.

SECTION III.

PRIVILEGE.

The privileges of the members of Parliament, from small and obscure beginnings, have been advancing for centuries with a firm and never-yielding pace. Claims seem to have been brought forward from time to time, and repeated till some example of their admission enabled them to build law on that example. We can only, therefore, state the point of progression at which they now are. It is now acknowledged, 1st, That they are at all times exempted from question elsewhere, for any thing said in their own House: that during the time of privilege, 2d, Neither a member himself, his wife,* or his servants, [*familiares sui*] for any matter of their

* Order of the House of Commons, 1663, July 16.

own, may be† arrested on mesne process, in any civil suit: 3d, Nor be detained under execution, though levied before the time of privilege: 4th, Nor impleaded, cited, or subpœnaed, in any court: 5th, Nor summoned as a witness or juror: 6th, Nor may their lands or goods be distrained: 7th, Nor their persons assaulted, or characters traduced. And the period of time, covered by privilege, before and after the session, with the practice of short prorogations under the connivance of the Crown, amounts in fact to a perpetual protection against the course of justice. In one instance, indeed, it has been relaxed by 10 G. 3. c. 50. which permits judiciary proceedings to go on against them. That these privileges must be continually progressive, seems to result from their rejecting all definition of them; the doctrine being, that "their dignity and independence are preserved by keeping their privileges indefinite;" and that "the maxim's upon which they proceed, together with the method of proceeding, rest entirely in their own breast, and are not defined and ascertained by any particular stated laws."—1 *Blackstone*, 163, 164.

It was probably from this view of the encroaching character of privilege, that the framers of our Constitution, in their care to provide that the laws shall bind equally on all, and especially that those who make them shall not exempt themselves from their operation, have only privileged "Senators and Representatives" themselves from the single act of arrest in all cases except

† Elsynge, 217—1 Hats. 21—1 Grey's deb. 133.

treason, felony, and breach of the peace, during their attendance at the session of their respective Houses, and in going to and returning from the same, and from being questioned in any other place for any speech or debate in either House."—Const. U. S. Art. I Sec. 6. Under the general authority "to make all laws necessary and proper for carrying into execution the powers given them." Const. U. S. Art. II. Sec. 8, they may provide by law the details which may be necessary for giving full effect to the enjoyment of this privilege. No such law being as yet made, it seems to stand at present on the following ground:—1. The act of arrest is void, *ab initio*, 2 Stra. 989.—2. The member arrested may be discharged on motion. 1 Bl. 166. 2 Stra. 990; or by Habeas Corpus under the Federal or State authority, as the case may be; or by a writ of privilege out of the Chancery, 2 Stra. 989, in those States which have adopted that part of the laws of England—Orders of the House of Com. 1550, Feb. 20. 3. The arrest being unlawful, is a trespass for which the officer and others concerned are liable to action or indictment in the ordinary courts of justice, as in other cases of unauthorized arrest.—4. The court before which the process is returnable, is bound to act as in other cases of unauthorized proceeding, and liable also, as in other similar cases, to have their proceedings staid or corrected by the Superior Courts.

The time necessary for going to and returning from Congress not being defined, it will of course be judged of in every particular case by those who will have to decide the case.

While privilege was understood in England to extend, as it does here, only to exemption from arrest *eundo*, *morando*, *et redeundo*, the House of Commons themselves decided that "a convenient time was to be understood,"—1580—1 *Hats.* 99, 100. Nor is the law so strict

in point of time as to require the party to set out immediately on his return, but allows him time to settle his private affairs, and to prepare for his journey; and does not even scan his road very nicely, nor forfeit his protection for a little deviation for that which is most direct; some necessity perhaps constraining him to it.—2 *Stra.* 986, 987.

This privilege from arrest, privileges of course against all process, the disobedience to which is punishable by an attachment of the person; as a subpœna ad respondendum, or testificandum, or a summons on a jury; and with reason, because a member has superior duties to perform in another place.

When a Representative is withdrawn from his seat by summons, the 47,700 people whom he represents lose their voice in debate and vote, as they do in his voluntary absence: when a Senator is withdrawn by summons, his State loses half its voice in debate and vote, as it does in his voluntary absence. The enormous disparity of evil admits no comparison.

So far there will probably be no difference of opinion as to the privileges of the two Houses ot Congress: but in the following cases it is otherwise. In Dec. 1795, the House of Representatives committed two persons of the names of Randall and Whitney, for attempting to corrupt the integrity of certain members, which they considered as a contempt and breach of the privileges of the House: and the facts being proved, Whitney was detained in confinement a fortnight, and Randall three weeks, and was reprimanded by the Speaker. In March, 1796, the House of Representatives voted, a challenge given to a member of their House, to be a breach of the privileges of the House; but satisfactory apologies and

acknowledgments being made, no further proceeding was had. The Editor of the Aurora having, in his paper of Feb. 19, 1800, inserted some paragraphs defamatory to the Senate, and failed in his appearance, he was ordered to be committed. In debating the legality of this order, it was insisted in support of it, that every man, by the law of nature, and every body of men, possesses the right of self-defence; that all public functionaries are essentially invested with the powers of self-preservation; that they have an inherent right to do all acts necessary to keep themselves in a condition to discharge the trusts confided to them; that whenever authorities are given, the means of carrying them into execution are given by necessary implication; that thus we see the British Parliament exercise the right of punishing contempts; all the State Legislatures exercise the same power; and every Court does the same; that if we have it not, we sit at the mercy of every intruder who may enter our doors or gallery, and by noise and tumult render proceeding in business impracticable; that if our tranquillity is to be perpetually disturbed by newspaper defamation, it will not be possible to exercise our functions with the requisite coolness and deliberation; and that we must therefore have a power to punish these disturbers of our peace and proceedings. To this it was answered, that the Parliament and Courts of England have cognizance of contempts by the express provisions of their law; that the State Legislatures have equal authority, because their powers are plenary; they represent their constituents completely, and possess all their powers, except such as their Constitutions have expressly denied them; that the Courts of the several States have the same powers by the laws of their States, and those of the Federal Government by the same State laws, adopted in each State by a law of Congress; that none of these bodies, therefore, derive those powers from natural or necessary right, but from express law; that Congress have no such natural or necessary power, nor

any powers but such as are given them by the Constitution; that that has given them directly, exemption from personal arrest, exemption from question elsewhere for what is said in their House, and power over their own members and proceedings; for these, no further law is necessary, the Constitution being the law; that, moreover, by that article of the Constitution which authorizes them "to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in them," they may provide by law for an undisturbed exercise of their functions, *e. g.* for the punishment of contempts, of affrays or tumults in their presence, &c.; but, till the law be made, it does not exist; and does not exist, from their own neglect; that in the meantime, however, they are not unprotected, the ordinary magistrates and courts of law being open and competent to punish all unjustifiable disturbances or defamations, and even their own sergeant, who may appoint deputies ad libitum to aid him, 3 *Grey*, 59, 147, 255, is equal to the smallest disturbances; that, in requiring a previous law, the Constitution had regard to the inviolability of the citizen as well as of the member; as, should one House, in the regular form of a bill, aim at too broad privileges, it may be checked by the other, and both by the President; and also as, the law being promulgated, the citizen will know how to avoid offence. But if one branch may assume its own privileges without control; if it may do it on the spur of the occasion, conceal the law in its own breast, and after the fact committed make its sentence both the law and the judgment on that fact; if the offence is to be kept undefined, and to be declared only ex re nata, and according to the passions of the moment, and there be no limitation either in the manner or measure of the punishment, the condition of the citizen will be perilous indeed. Which of these doctrines is to prevail, time will decide. Where there is no fixed law, the judgment on any particular case is the law of that single case only, and dies with it. When a new and even a

similar case arises, the judgment which is to make, and at the same time apply, the law, is open to question and consideration, as are all new laws. Perhaps Congress, in the mean time, in their care for the safety of the citizens, as well as that for their own protection, may declare by law what is necessary and proper to enable them to carry into execution the powers vested in them, and thereby hang up a rule for the inspection of all, which may direct the conduct of the citizen, and at the same time test the judgments they shall themselves pronounce in their own case.

Privilege from arrest takes place by force of the election; and before a return be made, a member elected may be named of a committee, and is to every intent a member, except that he cannot vote until he is sworn.—*Memor.* 107, 108—*Dewes*, 642. *col.* 2. 643. *col.* 1.—*Pet. miscel. Parl.* 119—*Lex. Parl. c.* 23—2 *Hats.* 22. 62.

Every man must, at his peril, take notice who are members of either House returned of record.—*Lex. Parl.* 23, 4—*Inst.* 24.

On complaint of a breach of privilege, the party may either be summoned, or sent for in custody of the sergeant.—1 *Grey*, 88. 95.

The privilege of a member is the privilege of the House. If the member waive it without leave, it is a ground for punishing him, but cannot in effect waive the privilege of the House. 3 *Grey*, 140. 222.

For any speech or debate in either House, they shall not be questioned in any other place. —*Const. U. S. Art.* I. *Sec.* 6. *S. P. protest of commons to James I.* 1621. 2 *Rapin. No.* 54.

p. 211, 212. But this is restrained to things done in the House in a Parliamentary course, 1 *Rush*, 663.—For he is not to have privilege contra morem parliamentarium, to exceed the bounds and limits of his place and duty.—*Com. p.*

If an offence be committed by a member in the House, of which the House has cognizance, it is an infringement of their right for any person or court to take notice of it, till the House has punished the offender, or referred him to a due course.—*Lex. Parl.* 63.

Privilege is in the power of the House, and is a restraint to the proceeding of inferior courts; but not of the House itself.—2 *Nalson*, 450—2 *Grey*, 399. For whatever is spoken in the House, is subject to the censure of the House; and offences of this kind have been severely punished, by calling the person to the bar to make submission, committing him to the Tower, expelling the House, &c.—*Scob.* 72—*Lex. Parl. c.* 22.

It is a breach of order, for the Speaker to refuse to put a question which is in order.—2 *Hats.* 175, 176—5 *Grey*, 133.

And even in cases of treason, felony, and breach of the peace, to which privilege does not extend as to substance; yet, in Parliament, a member is privileged as to the mode of proceeding. The case is first to be laid before the House, that it may judge of the fact, and of the grounds of the accusation, and how far forth the

manner of the trial may concern their privilege. Otherwise it would be in the power of other branches of the government, and even of every private man, under pretences of treason, &c. to take any man from his service in the House; and so as many, one after another, as would make the House what he pleaseth—*Decision of the Commons on the King's declaring Sir John Hotham a traitor*—4 *Rushw.* 586. So when a member stood indicted of felony, it was adjudged that he ought to remain of the House till conviction. For it may be any man's case, who is guiltless, to be accused and indicted of felony, or the like crime.—23 *El.* 1580—*D'Ewes*, 283. *col.* 1—*Lex. Parl.* 133.

When it is found necessary for the public service to put a member under arrest, or when, on any public inquiry, matter comes out which may lead to affect the person of a member, it is the practice immediately to acquaint the House, that they may know the reasons for such a proceeding, and take such steps as they think proper.—2 *Hats.* 259. Of which, see many examples.—2 *Hats.* 256, 257, 258. But the communication is subsequent to the arrest.—1 *Blackst.* 167.

It is highly expedient, says Hatsell, for the due preservation of the privileges of the separate branches of the Legislature, that neither should encroach on the other, or interfere in any matter depending before them, so as to preclude, or even influence, that freedom of debate, which is

essential to a free council. They are therefore not to take notice of any bills or other matters depending, or of votes that have been given, or of speeches that have been held, by the members of either of the other branches of the Legislature, until the same have been communicated to them in the usual Parliamentary manner—2 *Hats.* 252—4 *Inst.* 15—*Seld. Jud.* 53. Thus the King's taking notice of the bill for suppressing soldiers depending before the House, his proposing a provisional clause for a bill before it was presented to him by the two Houses, his expressing displeasure against some persons for matters moved in Parliament during the debate and preparation of a bill, were breaches of privilege.—2 *Nalson*, 743; and in 1783, December 17, it was declared a breach of fundamental privileges, &c. to report any opinion, or pretended opinion of the King, on any bill or proceeding depending in either House of Parliament, with a view to influence the votes of the members.—2 *Hats.* 251, 6.

SECTION IV.

ELECTIONS.

The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in

each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators.—*Const. U. S. Art. I. Sec.* 4.

Each House shall be the judge of the elections, returns, and qualifications, of its own members.—*Const. U. S. Art. I. Sec.* 5.

SECTION V.

QUALIFICATIONS.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the end of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments, until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a Senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.—*Const. U. S. Art. I. Sec.* 3.

The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand; but each State shall have at least one Representative.—*Const. U. S. Art. I. Sec.* 2.

The provisional apportionments of Representatives made in the Constitution in 1787, and afterwards by Congress, were as follows:

	1787	1790	1800	1810	1820	1830*
Maine,	-	-	-	-	7	8
New Hampshire,	3	4	5	6	6	5
Massachusetts,	8	14	17	20	13	12
Rhode Island,	1	2	2	2	2	2
Connecticut,	5	7	7	7	6	6
Vermont,	2	2	4	6	5	5
New York,	6	10	17	27	34	40
New Jersey,	4	5	6	6	6	6
Pennsylvania,	8	13	18	23	26	28
Delaware,	1	1	1	2	1	1
Maryland,	6	8	9	9	9	8
Virginia,	10	19	22	23	22	21
North Carolina,	5	10	12	13	13	13
South Carolina,	5	6	8	9	9	9
Georgia,	3	2	4	6	7	9
Kentucky,	2	2	6	10	12	13
Tennessee,	0	1	3	6	9	13
Ohio,	0	0	1	6	14	19
Louisiana,	0	0	0	1	3	3
Indiana,	0	0	0	1	3	7
Mississippi,	0	0	0	1	1	2
Illinois,	0	0	0	1	1	3
Alabama,	0	0	0	1	3	5
Missouri,	0	0	0	0	1	2
	69	106	142	186	213	222

When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.—*Const. U. S. Art. 1. Sec.* 2.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person,

* The Act of 22d May, 1832, fixes the ratio at one for forty-seven thousand seven hundred.

holding any office under the United States, shall be a member of either House, during his continuance in office.—*Const. U. S. Art. I. Sec.* 6.

SECTION VI.

QUORUM.

A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.—*Const. U. S. Art. I. Sec.* 5.

In general, the chair is not to be taken till a quorum for business is present; unless after due waiting, such a quorum be despaired of, when the chair may be taken, and the House adjourned. And whenever, during business, it is observed that a quorum is not present, any member may call for the house to be counted: and being found deficient, business is suspended.—2 *Hats.* 125, 126.

The President having taken the chair, and a quorum being present, the journal of the preceding day shall be read, to the end, that any mistake may be corrected that shall have been made in the entries.—*Rules of the Senate*, 1.

SECTION VII.

CALL OF THE HOUSE.

On a call of the House, each person rises up as he is called, and answereth; the absentees are

then only noted, but no excuse to be made till the House be fully called over. Then the absentees are called a second time, and if still absent, excuses are to be heard.—*Ord. H. of C.* 92.

They rise, that their persons may be recognized; the voice, in such a crowd, being an insufficient verification of their presence. But in so small a body as the Senate of the United States, the trouble of rising cannot be necessary.

Orders for calls on different days may subsist at the same time.—2 *Hats.* 72.

SECTION VIII.

ABSENCE.

No member shall absent himself from the service of the Senate without leave of the Senate first obtained. And in case a less number than a quorum of the Senate shall convene, they are hereby authorized to send the sergeant-at-arms, or any other person or persons by them authorized, for any or all absent members, as the majority of such members present shall agree, at the expense of such absent members, respectively, unless such excuse for non-attendance shall be made, as the Senate, when a quorum is convened, shall judge sufficient, and in that case the expense shall be paid out of the contingent fund. And this rule shall apply as well to the first

convention of the Senate, at the legal time of meeting, as to each day of the session, after the hour is arrived to which the Senate stood adjourned.—*Rule* 8.

SECTION IX.

SPEAKER.

The Vice President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.—*Const. U. S. Art. I. Sec.* 3.

The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President, or when he shall exercise the office of President of the United States.—*Const. U. S. Art. I. Sec.* 3.

The House of Representatives shall choose their Speaker and other officers.—*Const. U. S. Art. I. Sec.* 2.

When but one person is proposed, and no objection made, it has not been usual in Parliament to put any question to the House; but without a question, the members proposing him, conduct him to the chair. But if there be objection, or another proposed, a question is put by the clerk.—2 *Hats.* 168. As are also questions of adjournment.—6 *Grey*, 406. Where the House debated and exchanged messages and answers with the king for a week, without a Speaker, till they were prorogued. They have done it de die in diem for 14 days.—1 *Chand.* 331, 335.

In the Senate, a President pro tempore, in the absence of the Vice President, is proposed and chosen by ballot. His office is understood to be determined on the Vice President's appearing and taking the chair, or at the meeting of the Senate after the first recess.—*Vide Rule* 23.

Where the Speaker has been ill, other Speakers pro tempore have been appointed. Instances of this are, 1 *H.* 4, Sir John Cheney, and for Sir Wm. Sturton, and in 15 *H.* 6, Sir John Tyrrell, in 1656, Jan. 27—1658, Mar. 9—1659, Jan. 13.

Sir Job Charlton ill, Seymour chosen, 1673, Feb. 18.

Seymour being ill, Sir Robt. Sawyer chosen, 1678, Apr. 15.

Sawyer being ill, Seymour chosen.

not merely pro tempore. 1 *Chand.* 169, 276, 277.

Thorpe in execution, a new Speaker chosen —31 *H.* VI—3 *Grey*, 11; and March 14, 1694, Sir John Trevor chosen. There have been no later instances—2 *Hats.* 161.—4 *Inst.*—8 *Lex. Parl.* 263.

A Speaker may be removed at the will of the House, and a Speaker pro tempore appointed.—2 *Grey*, 186—5 *Grey*, 134,—*Vide Rule Sen.* 23.

SECTION X.

ADDRESS.

The President shall, from time to time, give to the Congress information of the state of the Union, and re-

commend to their consideration such measures as he shall judge necessary and expedient.—*Const. U. S. Art. II. Sec.* 3.

A joint address from both Houses of Parliament is read by the Speaker of the House of Lords. It may be attended by both Houses in a body, or by a committee from each House, or by the two Speakers only. An address of the House of Commons only, may be presented by the whole House, or by the Speaker.—9 *Grey*, 473, 1 *Chandler*, 298. 301, or by such particular members as are of the Privy Council.—2 *Hats.* 276.

SECTION XI.

COMMITTEES.*

Standing committees, as of privileges and elections, &c. are usually appointed at the first meeting, to continue through the session. The person first named is generally permitted to act as chairman. But this is a matter of courtesy; every committee having a right to elect their own chairman, who presides over them, puts questions, and reports their proceedings to the House.—4 *Inst.* 11, 12—*Scob.* 7—1 *Grey* 112.

* Mode of appointing Committees.—*Vide Senate Rules* 34. *Rules H. R.* 9.

At these committees the members are to speak standing, and not sitting; though there is reason to conjecture it was formerly otherwise. *D'Ewes*, 630. *col.* 1—4 *Parl. Hist.* 440—2 *Hats.* 77.

Their proceedings are not to be published, as they are of no force till confirmed by the House. *Rushw. part* 3, *vol.* 2, 74—3 *Grey*, 401—*Scob.* 39. Nor can they receive a petition but through the House.—9 *Grey*, 412.

When a committee is charged with an inquiry, if a member prove to be involved, they cannot proceed against him, but must make a special report to the House; whereupon the member is heard in his place, or at the bar, or a special authority is given to the committee to inquire concerning him.—9 *Grey*, 523.

So soon as the House sits, and a committee is notified of it, the chairman is in duty bound to rise instantly, and the members to attend the service of the House.—2 *Nals.* 319. *Vide Rules H. R.* 78.

It appears, that on joint committee of the Lords and Commons, each committee acted integrally, in the following instances—7 *Grey*, 261, 278, 285, 338—1 *Chandler*, 357. 462. In the following instances it does not appear whether they did or not—6 *Grey*, 129—7 *Grey*, 213. 229. 321.

SECTION XII.

COMMITTEE OF THE WHOLE.

The speech, messages, and other matters of great concernment, are usually referred to a committee of the whole House—6 *Grey*, 311, where general principles are digested in the form of resolutions, which are debated and amended till they get into a shape which meets the approbation of a majority. These being reported and confirmed by the House, are then referred to one or more select committees, according as the subject divides itself into one or more bills—*Scob.* 36, 44. Propositions for any charge on the people are especially to be first made in a committee of the whole—3 *Hats.* 127. *Vide Rules H. R.* 101. The sense of the whole is better taken in committee, because in all committees every one speaks as often as he pleases—*Scob.* 49. *Vide Rules H. R.* 104. They generally acquiesce in the chairman named by the Speaker; but, as well as all other committees, have a right to elect one, some member, by consent, putting the question—*Scob.* 36—3 *Grey*, 301. *Vide Rules H. R.* 96. The form of going from the House into committee, is for the Speaker, on motion, to put the question that the House do now resolve itself into a committee of the whole, to take under

consideration such a matter, naming it. If determined in the affirmative, he leaves the chair, and takes a seat elsewhere, as any other member; and the person appointed chairman seats himself at the clerk's table.—*Scob.* 36. *Vide Rules H. R.* 96. Their quorum is the same as that of the House; and if a defect happens, the chairman, on a motion and question, rises, the Speaker resumes the chair, and the chairman can make no other report than to inform the House of the cause of their dissolution. If a message is announced during a committee, the Speaker takes the chair, and receives it, because the committee cannot.—2 *Hats.* 125, 126.

In a committee of the whole, the tellers, on a division, differing as to numbers, great heats and confusion arose, and danger of a decision by the sword. The Speaker took the chair, the mace was forcibly laid on the table; whereupon, the members retiring to their places, the Speaker told the House "he had taken the chair without an order, to bring the House into order." Some excepted against it; but it was generally approved as the only expedient to suppress the disorder. And every member was required, standing up in his place, to engage that he would proceed no further, in consequence of what had happened in the grand committee, which was done.—3 *Grey*, 139.

A committee of the whole being broken up in disorder, and the chair resumed by the Speaker without an order, the House was ad-

journed. The next day the committee was considered as thereby dissolved, and the subject again before the House; and it was decided in the House, without returning into committee. 3 *Grey*, 130.

No previous question can be put in a committee; nor can this committee adjourn as others may; but if their business is unfinished, they rise on a question, the House is resumed, and the chairman reports that the committee of the whole have, according to order, had under their consideration such a matter, and have made progress therein: but not having time to go through the same, have directed him to ask leave to sit again. Whereupon, a question is put on their having leave, and on the time when the House will again resolve itself into a committee.—*Scob.* 38. But if they have gone through the matter referred to them, a member moves that the committee may rise, and the chairman report their proceedings to the House; which being resolved, the chairman rises, the Speaker resumes the chair, the chairman informs him that the committee have gone through the business referred to them, and that he is ready to make report when the House shall think proper to receive it. If the House have time to receive it, there is usually a cry of "now, now," whereupon he makes the report: but if it be late, the cry is "to-morrow, to-morrow," or "on Monday," &c. or a motion is

made to that effect, and a question put, that it be received to-morrow, &c.—*Scob.* 38.

In other things the rules of proceedings are to be the same as in the House.—*Scob.* 39.

SECTION XIII.

EXAMINATION OF WITNESSES.

Common fame is a good ground for the House to proceed by inquiry, and even to accusation.—*Resolution of House of Commons*, 1 *Car.* 1, 1625—*Rush Lex. Parl.* 115—1 *Grey*, 16. 22. 92—8 *Grey*, 21, 23. 27. 45.

Witnesses are not to be produced but where the House has previously instituted an inquiry, 2 *Hats.* 102, nor then are orders for their attendance given blank.—3 *Grey*, 51.

When any person is examined before a committee, or at the bar of the House, any member wishing to ask the person a question, must address it to the Speaker or chairman, who repeats the question to the person, or says to him, "you hear the question, answer it." But if the propriety of the question be objected to, the Speaker directs the witness, counsel, and parties, to withdraw; for no question can be moved, or put, or debated, while they are there.—2 *Hats.* 108.

Sometimes the questions are previously settled in writing before the witness enters.—2 *Hats.* 106, 107—8 *Grey*, 64. The questions asked must be entered in the journals.—3 *Grey*, 81. But the testimony given in answer before the House, is never written down; but before a committee it must be, for the information of the House, who are not present to hear it.—7 *Grey*, 52. 334.

If either House have occasion for the presence of a person in custody of the other, they ask the other their leave that he may be brought up to them in custody.—3 *Hats.* 52.

A member, in his place, gives information to the House of what he knows of any matter under hearing at the bar.—*Jour. H. of C. Jan.* 22, 1744—5.

Either House may request, but not command, the attendance of a member of the other. They are to make the request by message to the other House, and to express clearly the purpose of attendance, that no improper subject of examination may be tendered to him. The house then gives leave to the member to attend, if he choose it; waiting first to know from the member himself whether he chooses to attend, till which they do not take the message into consideration. But when the Peers are sitting as a court of Criminal Judicature, they may order attendance; unless where it be a case of impeachment by the Commons. There it is to be a request.—3 *Hats.* 17—9 *Grey*, 306. 406—10 *Grey*, 133.

Counsel are to be heard only on private, not on public bills; and on such points of law only as the House shall direct.—19 *Grey*, 61.

SECTION XIV.

ARRANGEMENT OF BUSINESS.

The Speaker is not precisely bound to any rules as to what bills or other matter shall be first taken up, but is left to his own discretion, unless the House on a question decide to take up a particular subject.—*Hakew.* 136.

A settled order of business is, however, necessary for the government of the presiding person, and to restrain individual members from calling up favourite measures, or matters under their special patronage, out of their just turn. It is useful also for directing the discretion of the House, when they are moved to take up a particular matter, to the prejudice of others having a priority of right to their attention in the general order of business.

In Senate, the bills and other papers which are in possession of the House, and in a state to be acted upon, are arranged every morning, and brought on in the following order:

1. Bills ready for a second reading are read, that they may be referred to committees, and so be put under way.

But if, on their being read, no motion is made for commitment, they are then laid on the table in the general file, to be taken up in their just turn.

2. After twelve o'clock, bills ready for it are put on their passage.

3. Reports in possession of the House, which offer grounds for a bill, are to be taken up, that the bill may be ordered in.

4. Bills or other matters before the House, and unfinished on the preceding day, whether taken up in turn, or on special order, are entitled to be resumed and passed on through their present stage.

5. These matters being despatched, for preparing and expediting business, the general file of bills and other papers is then taken up, and each article of it is brought on according to its seniority, reckoned by the date of its first introduction to the House. Reports on bills belong to the dates of their bills.

[The arrangement of the business of the Senate is now as follows:

1. Motions previously submitted.

2. Reports of Committees previously made.

3. Bills from the House of Representatives, and those introduced on leave, which have been read the first time, are read the second time; and, if not referred to a Committee, are considered in Committee of the whole, and proceeded with as in other cases.

4. After twelve o'clock, engrossed bills of the Senate, and bills of the House of Representatives, on the third reading are put on their passage.

5. If the above are finished before one o'clock, the general file of bills, consisting of those reported from Committees on the second reading, and those reported from Committees after having been referred, are taken up in the order in which they were reported to the Senate by the respective Committees.

6. At one o'clock, if no business be pending, or if no motion be made to proceed to other business, the special

orders are called, at the head of which stands the unfinished business of the preceding day.]—*Vid. Rules H. R.* 16, 17.

In this way we do not waste our time in debating what shall be taken up: we do one thing at a time, follow up a subject while it is fresh, and till it is done with; clear the House of business gradatim as it is brought on, and prevent, to a certain degree, its immense accumulation towards the close of the session.

Arrangement, however, can only take hold of matters in possession of the House. New matter may be moved at any time, when no question is before the House. Such are, original motions, and reports on bills. Such are, bills from the other House, which are received at all times, and receive their first reading as soon as the question then before the House is disposed of; and bills brought in on leave, which are read first whenever presented. So, messages from the other House respecting amendments to bills, are taken up as soon as the House is clear of a question, unless they require to be printed, for better consideration. Orders of the day may be called for, even when another question is before the House.

SECTION XV.

ORDER.

Each House may determine the rules of its proceedings; punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member.—*Const. I.* 5.

In Parliament, "instances make order," *per*

Speaker Onslow, 2 *Hats.* 144; but what is done only by one Parliament, cannot be called custom of Parliament: *by Prynne*, 1 *Grey*, 52.

SECTION XVI.

ORDER RESPECTING PAPERS.

The Clerk is to let no journals, records, accounts, or papers, be taken from the table, or out of his custody.—2 *Hats.* 193, 194.

Mr. Prynne having, at a committee of the whole, amended a mistake in a bill, without order or knowledge of the committee, was reprimanded.—1 *Chand.* 77.

A bill being missing, the House resolved, that a protestation should be made and subscribed by the members, "before Almighty God and this honourable House, that neither myself nor any other, to my knowledge, have taken away, or do at this present conceal a bill entitled," &c.—5 *Grey*, 202.

After a bill is engrossed it is put into the Speaker's hands, and he is not to let any one have it to look into.—*Town. col.* 209.

SECTION XVII.

ORDER IN DEBATE.

When the Speaker is seated in his chair, every member is to sit in his place.—*Scob.* 6—3 *Grey*, 403.

When any member means to speak, he is to stand up in his place, uncovered, and to address himself, not to the House, or any particular member, but to the Speaker, who calls him by his name, that the House may take notice who it is that speaks.—*Scob.* 6—*D'Ewes*, 487, *col.* 1—2 *Hats.* 77—4 *Grey*, 66—8 *Grey*, 108. But members who are indisposed may be indulged to speak sitting.—3 *Hats.* 75. 77—1 *Grey*, 195.

In Senate, every member, when he speaks, shall address the chair, standing in his place; and when he has finished, shall sit down.—*Rule* 3.

When any member is about to speak in debate, or deliver any matter to the House, he shall rise from his seat, and respectfully address himself to "Mr. Speaker," and shall confine himself to the question under debate, and avoid personality.—*Rule H. R.* 20.

When a member stands up to speak, no question is to be put; but he is to be heard, unless the House overrule him.—4 *Grey*, 390—5 *Grey*, 6. 143.

If two or more rise to speak nearly together, the Speaker determines who was first up, and calls him by name; whereupon he proceeds,

unless he voluntarily sits down, and gives way to the other. But sometimes the House does not acquiesce in the Speaker's decision; in which case, the question is put, "Which member was first up?"—2 *Hats.* 76—*Scob.* 7—*D'Ewes*, 434, *col.* 1, 2.

In the Senate of the United States, the President's decision is without appeal. Their rule is in these words: When two members rise at the same time, the President shall name the person to speak; but in all cases, the member who shall first rise and address the chair, shall speak first.—*Rule* 5.

No man may speak more than once to the same bill, on the same day; or even on another day, if the debate be adjourned. But if it be read more than once, in the same day, he may speak once at every reading.—*Co.* 12, 116—*Hakew.* 148—*Scob.* 58—2 *Hats.* 75. Even a change of opinion does not give a right to be heard a second time.—*Smyth Comw. L.* 2. *c.* 3—*Arcan. Parl.* 17.

The corresponding rule of Senate is in these words: No member shall speak more than twice in any one debate on the same day, without leave of the Senate.—*Rule* 4.

No member shall speak more than twice to the same question, without leave of the House, nor more than once until every member choosing to speak shall have spoken.—*Rule H. R.* 23.

But he may be permitted to speak again to clear a matter of fact.—3 *Grey*, 357. 416. Or merely to explain himself, 3 *Hats.* 73, in some material part of his speech, *ib.* 75; or to the manner or words of the question, keeping him-

self to that only, and not travelling into the merits of it, *Memorials in Hakew.* 29; or to the orders of the House, if they be transgressed, keeping within that line, and not falling into the matter itself.—*Mem. Hakew.* 30, 31.

But if the Speaker rises to speak, the member standing up ought to sit down, that he may be first heard.—*Town. col.* 205—*Hale Parl.* 133—*Mem. in Hakew.* 30, 31. Nevertheless, though the Speaker may of right speak to matters of order and be first heard, he is restrained from speaking on any other subject, except where the House have occasion for facts within his knowledge; then he may, with their leave, state the matter of fact.—3 *Grey*, 38.

No one is to speak impertinently or beside the question, superfluously or tediously.—*Scob.* 31. 33—2 *Hats.* 166. 168—*Hale. Parl.* 133.

No person is to use indecent language against the proceedings of the House, no prior determination of which is to be reflected on by any member, unless he means to conclude with a motion to rescind it.—2 *Hats.* 169, 170—*Rushw. p.* 3. *v.* 1. *fol.* 42. But while a proposition is under consideration, is still in fieri, though it has even been reported by a committee, reflections on it are no reflections on the House.—9 *Grey*, 308.

No person, in speaking, is to mention a member then present by his name; but to describe him by his seat in the House, or who spoke

last, or on the other side of the question, &c. *Mem. in Hakew.*—3 *Smyth's Comw. L.* 2. *c.* 3; nor to digress from the matter to fall upon the person.—*Scob.* 31—*Hale Parl.* 133—2 *Hats.* 166, by speaking, reviling, nipping, or unmannerly words against a particular member. *Smyth's Comw. L.* 2. *c.* 3. The consequences of a measure may be reprobated in strong terms; but to arraign the motives of those who propose or advocate it, is a personality, and against order.—Qui digreditur a materia ad personam, Mr. Speaker ought to suppress.—*Ord. Com.* 1604, *Apr.* 19.

When a member shall be called to order, he shall sit down until the President shall have determined whether he is in order or not.—*Rule* 16.

No member shall speak to another, or otherwise interrupt the business of the Senate, or read any printed paper, while the journals or public papers are reading, or when any member is speaking in any debate.—*Rule* 2.

Whilst the Speaker is putting any question, or addressing the House, none shall walk out of or across the House; nor, in such case, or when a member is speaking, shall entertain private discourse; nor whilst a member is speaking, shall pass between him and the chair.—*Rules H. R.* 25.

No one is to disturb another in his speech, by hissing, coughing, spitting, 6 *Grey*, 332—*Scob.* 8—*D'Ewes*, 332, *col.* 1; nor stand up to interrupt him, *Town. col.* 205—*Mem. in Hakew.* 31; nor to pass between the Speaker and the speaking member; nor to go across the House, *Scob.* 6; or to walk up and down it; or to take

books or papers from the table, or write there. 2 *Hats.* 171.

Nevertheless, if a member finds it is not the inclination of the House to hear him, and that, by conversation or any other noise, they endeavour to drown his voice, it is the most prudent way to submit to the pleasure of the House, and sit down; for it scarcely ever happens that they are guilty of this piece of ill manners without sufficient reason, or inattentive to a member who says any thing worth their hearing.—2 *Hats.* 77, 78.

If repeated calls do not produce order, the Speaker may call by his name any member obstinately persisting in irregularity; whereupon the House may require the member to withdraw. He is then to be heard in exculpation, and to withdraw. Then the Speaker states the offence committed, and the House considers the degree of punishment they will inflict.—2 *Hats.* 169, 7, 8. 172.

For instances of assaults and affrays in the House of Commons, and the proceedings thereon, see 1 *Pet. Misc.* 82—3 *Grey*, 128—4 *Grey*, 328—5 *Grey*, 38—26 *Grey*, 204—10 *Grey*, 8. Whenever warm words or an assault have passed between members, the House, for the protection of their members, requires them to declare in their places not to prosecute any quarrel, 3 *Grey*, 128. 293—5 *Grey*, 289; or orders them to attend the Speaker, who is to accommodate their differences, and to report to

the House, 3 *Grey*, 419; and they are put under restraint, if they refuse, or until they do. 9 *Grey*, 234. 312.

Disorderly words are not to be noticed till the member has finished his speech.—5 *Grey*, 356—6 *Grey*, 60. Then the person objecting to them, and desiring them to be taken down by the clerk at the table, must repeat them. The Speaker then may direct the clerk to take them down in his minutes. But if he thinks them not disorderly, he delays the direction. If the call becomes pretty general, he orders the clerk to take them down, as stated by the objecting member. They are then part of his minutes, and when read to the offending member, he may deny they were his words, and the House must then decide by a question whether they are his words or not. Then the member may justify them, or explain the sense in which he used them, or apologize. If the house is satisfied, no further proceeding is necessary. But if two members still insist to take the sense of the House, the member must withdraw before that question is stated, and then the sense of the House is to be taken.—2 *Hats.* 199—4 *Grey*, 170—6 *Grey*, 59. When any member has spoken, or other business intervened, after offensive words spoken, they cannot be taken notice of for censure. And this is for the common security of all, and to prevent mistakes, which must happen, if words are not taken down immediately. Formerly, they might be taken

down any time the same day.—2 *Hats.* 196—*Mem. in Hakew.* 71—3 *Grey*, 48—9 *Grey*, 514.

Disorderly words spoken in a committee, must be written down as in the House; but the committee can only report them to the House for animadversion.—6 *Grey*, 46.

The rule of the Senate says, If a member be called to order for words spoken, the exceptionable words shall be immediately taken down in writing, that the President may be better enabled to judge.—*Rule* 17.

In Parliament, to speak irreverently or seditiously against the King, is against order. *Smyth's Comw. L.* 2. *c.* 3—2 *Hats.* 170.

It is a breach of order in debate to notice what has been said on the same subject in the other House, or the particular votes or majorities on it there; because the opinion of each House should be left to its own independency, not to be influenced by the proceedings of the other; and the quoting them might beget reflections leading to a misunderstanding between the two Houses.—8 *Grey*, 22.

Neither House can exercise any authority over a member or officer of the other, but should complain to the House of which he is, and leave the punishment to them. Where the complaint is of words disrespectfully spoken by a member of another House, it is difficult to obtain punishment, because of the rules supposed necessary to be observed (as to the immediate noting down of words) for the security of members. There-

fore, it is the duty of the House, and more particularly of the Speaker, to interfere immediately, and not to permit expressions to go unnoticed, which may give a ground of complaint to the other House, and introduce proceedings and mutual accusations between the two Houses, which can hardly be terminated without difficulty and disorder.—3 *Hats.* 51.

No member may be present when a bill, or any business concerning himself is debating; nor is any member to speak to the merits of it till he withdraws.—2 *Hats.* 219. The rule is, that if a charge against a member arise out of a report of a committee, or examination of witnesses in the House, as the member knows from that to what points he is to direct his exculpation, he may be heard to those points, before any question is moved or stated against him. He is then to be heard, and withdraw before any question is moved. But if the question itself is the charge, as for breach of order, or matter arising in debate, there the charge must be stated, that is, the question must be moved, himself heard, and then to withdraw.—2 *Hats.* 121, 122.

Where the private interests of a member are concerned in a bill or question, he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principles of the social compact, which denies to any

man to be a judge in his own cause, it is for the honour of the House that this rule of immemorial observance should be strictly adhered to.—2 *Hats.* 119. 121.—6 *Grey*, 368.

No member is to come into the House with his head covered, nor to remove from one place to another with his hat on, nor is to put on his hat in coming in, or removing, until he be sit down in his place.—*Scob.* 6.

A question of order may be adjourned to give time to look into precedents.—2 *Hats.* 118.

In the Senate of the United States, every question of order is to be decided by the President, without debate: but if there be a doubt in his mind, he may call for the sense of the Senate.—*Rule* 6.

If any member, in speaking or otherwise, transgress the rules of the House, the Speaker shall, or any member may, call to order; in which case the member so called to order shall immediately sit down, unless permitted to explain; and the House shall, if appealed to, decide on the case, but without debate: if there be no appeal, the decision of the Chair shall be submitted to. If the decision be in favour of the member called to order, he shall be at liberty to proceed; if otherwise, he shall not be permitted to proceed without leave of the House; and, if the case require it, he shall be liable to the censure of the House.—*Rules H. R.* 21.

In Parliament, all decisions of the Speaker may be controlled by the House.—3 *Grey*, 319.

SECTION XVIII.

ORDERS OF THE HOUSE.

Of right, the door of the House ought not to be shut, but to be kept by porters, or sergeants-at-arms, assigned for that purpose.—*Mod. ten. Parl.* 23.

By the rule of the Senate, on motion made and seconded to shut the doors of the Senate, on the discussion of any business which may, in the opinion of a member, require secrecy, the President shall direct the Gallery to be cleared, and during the discussion of such motion, the door shall remain shut.—*Rule* 18.

No motion shall be deemed in order to admit any person or persons whatever within the doors of the Senate-chamber, to present any petition, memorial, or address, or to hear any such read.—*Rule* 19.

The only case where a member has a right to insist on any thing, is where he calls for the execution of a subsisting order of the House. Here, there having been already a resolution, any member has a right to insist that the Speaker, or any other whose duty it is, shall carry it into execution; and no debate or delay can be had on it. Thus any member has a right to have the House or gallery cleared of strangers, an order existing for that purpose; or to have the House told when there is not a quorum present. —2 *Hats.* 87. 129. How far an order of the House is binding, see *Hakew.* 392.

But where an order is made that any particular matter be taken up on a particular day, there

a question is to be put when it is called for, Whether the House will now proceed to that matter? Where orders of the day are on important or interesting matter, they ought not to be proceeded on till an hour at which the House is usually full—(*which in Senate is at noon.*)

Orders of the day may be discharged at any time, and a new one made for a different day.—3 *Grey*, 48. 313.

When a session is drawing to a close, and the important bills are all brought in, the House, in order to prevent interruption by further unimportant bills, sometimes come to a resolution, that no new bill be brought in, except it be sent from the other House.—3 *Grey*, 156.

All orders of the House determine with the session; and one taken under such an order, may, after the session is ended, be discharged on a Habeas Corpus.—*Raym.* 120—*Jacob's L. D. by Ruffhead—Parliament*, 1 *Lev.* 165, *Pritchard's case.*

Where the Constitution authorizes each House to determine the rules of its proceedings, it must mean in those cases, legislative, executive, or judiciary, submitted to them by the Constitution, or in something relating to these, and necessary towards their execution. But orders and resolutions are sometimes entered in the journals, having no relation to these, such as acceptances of invitations to attend orations, to take part in processions, &c. These must be understood to be merely conventional among those who are willing to participate in the ceremony, and are therefore perhaps improperly placed among the records of the House.

SECTION XIX.

PETITIONS.

A petition prays something. A remonstrance has no prayer.—1 *Grey*, 58.

Petitions must be subscribed by the petitioners, *Scob.* 87—*L. Parl. c.* 22—9 *Grey*, 362, unless they are attending, 1 *Grey*, 401, or unable to sign, and averred by a member, 3 *Grey*, 418. But a petition not subscribed, but which the member presenting it affirmed to be all in the hand-writing of the petitioner, and his name written in the beginning, was, on the question, (March 14, 1800,) received by the Senate. The averment of a member, or somebody without doors, that they know the hand-writing of the petitioners, is necessary, if it be questioned.—6 *Grey*, 36. It must be presented by a member, not by the petitioners, and must be opened by him, holding it in his hand, 10 *Grey*, 57.

Before any petition or memorial, addressed to the Senate, shall be received and read at the table, whether the same shall be introduced by the President or a member, a brief statement of the contents of the petition or memorial shall verbally be made by the introducer.—*Rule* 24.

Petitions, memorials, and other papers, addressed to the House, shall be presented by the Speaker, or by a member in his place: a brief statement of the contents thereof shall verbally be made by the introducer, and shall not be debated or decided on the day of their being first read, unless where the House shall direct otherwise,

but shall lie on the table, to be taken up in the order they were read.—*Rules H. R.* 45.

Regularly a motion for receiving it must be made and seconded, and a question put, Whether it shall be received? But a cry from the House of "Received," or even its silence, dispenses with the formality of this question: it is then to be read at the table, and disposed of.

SECTION XX.

MOTIONS.

When a motion has been made, it is not to be put to the question, or debated, until it is seconded.—*Scob.* 21.

The Senate say, No motion shall be debated until the same shall be seconded.—*Rule* 9.

It is then, and not till then, in possession of the House. It is to be put into writing, if the House or Speaker require it, and must be read to the House by the Speaker, as often as any member desires it for his information.—2 *Hats.* 82.

The Rule of the Senate is, When a motion shall be made and seconded, it shall be reduced to writing, if desired by the President or any member, delivered in at the table, and read by the President, before the same shall be debated.—*Rule* 10.

When a motion is made and seconded, it shall be stated by the Speaker; or, being in writing, it shall be handed to the chair, and read aloud by the clerk before debated.—*Rules H. R.* 29.

Every motion shall be reduced to writing, if the Speaker or any member desire it.—*Rules H. R.* 30.

It might be asked, whether a motion for adjournment, or for the orders of the day, can be made by one member while another is speaking? It cannot. When two members offer to speak, he who rose first is to be heard, and it is a breach of order in another to interrupt him, unless by calling him to order if he departs from it. And the question of order being decided, he is still to be heard through. A call for adjournment, or for the order of the day, or for the question, by gentlemen from their seats, is not a motion. No motion can be made without rising and addressing the chair. Such calls are themselves breaches of order, which though the member who has risen may respect as an expression of impatience of the House, against further debate, yet, if he chooses, he has a right to go on.

SECTION XXI.

RESOLUTIONS.

When the House commands, it is by an "order." But fact, principles, their own opinions, and purposes, are expressed in the form of resolutions.

A resolution for an allowance of money to the clerks, being moved, it was objected to as not in order, and so ruled by the chair. But on an appeal to the Senate, (i. e. a call for their sense by the President, on account of doubt in his mind, according to Rule 16,) the decision was over-ruled.—*Journ. Sen. June* 1, 1796. I presume the doubt was, whether an allowance of money could be made otherwise than by bill.

SECTION XXII.

BILLS.

Every bill shall receive three readings, previous to its being passed; and the President shall give notice at each, whether it be the first, second, or third; which readings shall be on three different days, unless the Senate unanimously direct otherwise.—*Rule* 26.

Every bill shall be introduced by motion for leave, or by an order of the House, on the report of the committee; and, in either case, a committee to prepare the same

shall be appointed. In cases of a general nature, one day's notice, at least, shall be given of the motion to bring in a bill; and every such motion may be committed.—*Rules H. R.* 87.

SECTION XXIII.

BILLS, LEAVE TO BRING IN.

One day's notice, at least, shall be given of an intended motion for leave to bring in a bill.—*Rule* 25.

When a member desires to bring in a bill on any subject, he states to the House, in general terms, the causes for doing it, and concludes by moving for leave to bring in a bill, entitled, &c. Leave being given, on the question, a committee is appointed to prepare and bring in the bill. The mover and seconder are always appointed on this committee, and one or more in addition. —*Hakew.* 132—*Scob.* 40.

It is to be presented fairly written, without any erasure or interlineation; or the Speaker may refuse it.—*Scob.* 31—1 *Grey*, 82. 84.

SECTION XXIV.

BILLS, FIRST READING.

When a bill is first presented, the clerk reads it at the table, and hands it to the Speaker, who, rising, states to the House the title of the bill; that this is the first time of reading it; and the question will be, Whether it shall be read a second time? Then sitting down, to give an opening for objections; if none be made, he rises again, and puts the question, Whether it shall be read a second time?—*Hakew.* 137. 141. A bill cannot be amended at the first reading.—6 *Grey*, 286; nor is it usual for it to be opposed then, but it may be done and rejected.—*D'Ewes*, 335, *col.* 1—3 *Hats.* 198. (*Vide Rules H. R.* 88.)

SECTION XXV.

BILLS, SECOND READING.

The second reading must regularly be on another day.—*Hakew.* 143. It is done by the clerk at the table, who then hands it to the Speaker. The Speaker, rising, states to the House the title of the bill, that this is the second

time of reading it, and that the question will be, Whether it shall be committed, or engrossed and read a third time? But if the bill came from the other House, as it always comes engrossed, he states that the question will be, Whether it shall be read a third time? And before he has so reported the state of the bill, no one is to speak to it.—*Hakew.* 143. 146.

In the Senate of the United States, the President reports the title of the bill, that this is the second time of reading it, that it is now to be considered as in a committee of the whole, and the question will be, Whether it shall be read a third time? or, that it may be referred to a special committee.—*Vide Rule* 27.

SECTION XXVI.

BILLS, COMMITMENT.

If, on motion and question, it be decided that the bill shall be committed, it may then be moved to be referred to a committee of the whole house, or to a special committee. If the latter, the Speaker proceeds to name the committee. Any member also may name a single person, and the clerk is to write him down as of the committee. But the House have a controlling power over the names and number, if a question be moved against any one; and may in any case put in and put out whom they please.

Those who take exceptions to some particulars in the bill, are to be of the committee. But none who speak directly against the body of the bill. For he that would totally destroy, would not amend it.—*Hakew.* 146—*Town. col.* 208—*D'Ewes*, 634. *col.* 2—*Scob.* 47; or as is said, 5 *Grey*, 145, the child is not to be put to a nurse that cares not for it.—6 *Grey*, 373. It is therefore a constant rule, "that no man is to be employed in any matter who has declared himself against it." And when any member who is against the bill, hears himself named of its committee, he ought to ask to be excused. Thus, March 6, 1606, Mr. Hadley was, on the question being put, excused from being of a committee, declaring himself to be against the matter itself. —*Scob.* 48.

No bill shall be committed or amended until it shall have been twice read, after which it may be referred to a committee.—*Rule* 27.

The first reading of a bill shall be for information; and, if opposition be made to it, the question shall be, "Shall this bill be rejected?" If no opposition be made, or if the question to reject be negatived, the bill shall go to its second reading without a question.—*Rules H. R.* 89.

In the appointment of the standing committees, the Senate will proceed, by ballot, severally to appoint the chairman of each committee, and then, by one ballot, the other members necessary to complete the same; and a majority of the whole number of votes given shall be necessary to the choice of a chairman of a standing committee. All other committees shall be appointed by ballot, and a plurality of votes shall make a choice. When any subject or matter shall have been referred to a com-

mittee, any other subject or matter of a similar nature may, on motion, be referred to such committee.—*Rule* 34.

The clerk may deliver the bill to any member of the committee.—*Town. col.* 138. But it is usual to deliver it to him who is first named.

In some cases, the House has ordered a committee to withdraw immediately into the committee-chamber, and act on, and bring back, the bill, sitting the House.—*Scob.* 48. (*Vide Rules H. R.* 78.)

A committee meets when and where they please, if the House has not ordered time and place for them.—6 *Grey*, 370. But they can only act when together, and not by separate consultation and consent, nothing being the report of the committee but what has been agreed to in committee actually assembled.

A majority of the committee constitutes a quorum for business.—*Elsynge's method of passing bills*, 11.

Any member of the House may be present at any select committee, but cannot vote, and must give place to all of the committee, and must sit below them.—*Elsynge*, 12—*Scob.* 49.

The committee have full power over the bill, or other paper committed to them, except that they cannot change the title or subject.—8 *Grey.* 228.

The paper before a committee, whether select, or of the whole, may be a bill, resolutions, draught of an address, &c. and it may either originate with them, or be referred to them. In

every case, the whole paper is read first by the clerk, and then by the chairman, by paragraphs, *Scob.* 49, pausing at the end of each paragraph, and putting questions, for amending, if proposed. In the case of resolutions on distinct subjects, originating with themselves, a question is put on each separately, as amended, or unamended, and no final question on the whole.—3 *Hats.* 276. But if they relate to the same subject, a question is put on the whole. If it be a bill, draught of an address, or other paper originating with them, they proceed by paragraphs, putting questions for amending, either by insertion or striking out, if proposed; but no question on agreeing to the paragraphs separately. This is reserved to the close, when a question is put on the whole for agreeing to it as amended or unamended. But if it be a paper referred to them, they proceed to put questions of amendment, if proposed, but no final question on the whole; because all parts of the paper having been adopted by the House, stand, of course, unless altered, or struck out by a vote. Even if they are opposed to the whole paper, and think it cannot be made good by amendments, they cannot reject it, but must report it back to the House without amendments, and there make their opposition.

The natural order in considering and amending any paper is, to begin at the beginning, and proceed through it by paragraphs; and this order is so strictly adhered to in Parliament, that, when a latter part has been amended, you can-

not recur back and make any alteration in a former part.—2 *Hats.* 90. In numerous assemblies, this restraint is, doubtless, important. But in the Senate of the United States, though in the main we consider and amend the paragraphs in their natural order, yet recurrences are indulged; and they seem, on the whole, in that small body, to produce advantages overweighing their inconveniences.

So this natural order of beginning at the beginning, there is a single exception found in Parliamentary usage. When a bill is taken up in committee, or on its second reading, they postpone the preamble, till the other parts of the bill are gone through. The reason is, that on consideration of the body of the bill, such alterations may therein be made, as may also occasion the alteration of the preamble.—*Scob.* 50—7 *Grey*, 431.

On this head, the following case occurred in the Senate, March 6, 1800. A resolution which had no preamble, having been already amended by the House, so that a few words only of the original remained in it, a motion was made to prefix a preamble, which, having an aspect very different from the resolution, the mover intimated that he should afterwards propose a correspondent amendment in the body of the resolution. It was objected that a preamble could not be taken up till the body of the resolution is done with. But the preamble was received; because we are in fact through the

body of the resolution, we have amended that as far as amendments have been offered, and indeed till little of the original is left. It is the proper time, therefore, to consider a preamble; and whether the one offered be consistent with the resolution, is for the House to determine. The mover, indeed, has intimated that he shall offer a subsequent proposition for the body of the resolution; but the House is not in possession of it; it remains in his breast, and may be withheld. The rules of the House can only operate on what is before them. The practice of the Senate, too, allows recurrences backwards and forwards for the purpose of amendment, not permitting amendments in a subsequent, to preclude those in a prior part, or *e converso*.

When the committee is through the whole, a member moves that the committee may rise, and the chairman report the paper to the House, with or without amendments, as the case may be.—2 *Hats.* 289. 292—*Scob.* 53—2 *Hats.* 290—8 *Scob.* 50.

When a vote is once passed in a committee, it cannot be altered but by the House, their votes being binding on themselves.—1607, *June* 4.

The committee may not erase, interline, or blot the bill itself; but must, in a paper by itself, set down the amendments, stating the words that are to be inserted or omitted, *Scob.* 50; and where, by reference to the page, line, and word of the bill.—*Scob.* 50.

SECTION XXVII.

REPORT OF COMMITTEE.

The chairman of the committee, standing in his place, informs the House, that the committee, to whom was referred such a bill, have, according to order, had the same under consideration, and have directed him to report the same without any amendment, or with sundry amendments, (as the case may be,) which he is ready to do when the House pleases to receive it. And he, or any other, may move that it be now received. But the cry of "now, now," from the House, generally dispenses with the formality of a motion and question. He then reads the amendments, with the coherence in the bill, and opens the alterations, and the reasons of the committee for such amendments, until he has gone through the whole. He then delivers it at the clerk's table, where the amendments reported are read by the clerk, without the coherence; whereupon the papers lie upon the table, till the House, at its convenience, shall take up the report.—*Scob.* 52—*Hakew.* 148.

The report being made, the committee is dissolved, and can act no more without a new power.—*Scob.* 51. But it may be revived by a vote, and the same matter recommitted to them.—4 *Grey*, 361.

SECTION XXVIII.

BILL, RE-COMMITMENT.

After a bill has been committed and reported, it ought not, in an ordinary course, to be re-committed. But in cases of importance, and for special reasons, it is sometimes re-committed, and usually to the same committee.—*Hakew.* 151. If a report be committed before agreed to in the House, what has passed in the committee is of no validity; the whole question is again before the committee, and a new resolution must be again moved, as if nothing had passed.—3 *Hats.* 131, *note.*

In Senate, January, 1800, the salvage bill was recommitted three times after the commitment.

A particular clause of a bill may be committed without the whole bill.—3 *Hats.* 131; or so much of a paper to one, and so much to another committee.

SECTION XXIX.

BILL, REPORT TAKEN UP.

When the report of a paper, originating with a committee, is taken up by the House, they

proceed exactly as in committee. Here, as in committee, when the paragraphs have, on distinct questions, been agreed to *seriatim*.—5 *Grey*, 366—6 *Grey*, 368—8 *Grey*, 47. 104. 360—1 *Torbuck's deb.* 125—3 *Hats.* 348—no question needs be put on the whole report.—5 *Grey*, 381.

On taking up a bill reported with amendments, the amendments only are read by the clerk. The Speaker then reads the first, and puts it to the question, and so on till the whole are adopted or rejected, before any other amendment be admitted, except it be an amendment to an amendment.—*Elsynge's Mem.* 23. When through the amendments of the committee, the Speaker pauses, and gives time for amendments to be proposed in the House to the body of the bill; as he does also if it has been reported without amendments; putting no question but on amendments proposed; and when through the whole, he puts the question, Whether the bill shall be read the third time?

SECTION XXX.

QUASI-COMMITTEE.

If on the motion and question, the bill be not committed, or if no proposition for commitment be made, then the proceedings in the Senate of

the United States, and in Parliament, are totally different. The former shall be first stated.

The 28th rule of the Senate says, "All bills, on a second reading, shall first be considered by the Senate in the same manner as if the Senate were in a committee of the whole, before they shall be taken up and proceeded on by the Senate agreeably to the standing rules, unless otherwise ordered;" that is to say, unless ordered to be referred to a special committee.

The proceedings of the Senate, as in a committee of the whole, or in quasi-committee, is precisely as in a real committee of the whole, taking no questions but on amendments. When through the whole, they consider the quasi-committee as risen, the House resumed, without any motion, question, or resolution to that effect, and the President reports, that "the House, acting as in committee of the whole, have had under their consideration the bill, entitled, &c. and have made sundry amendments, which he will now report to the House." The bill is then before them, as it would have been if reported from a committee, and questions are regularly to be put again on every amendment; which being gone through, the President pauses to give time to the House to propose amendments to the body o the bill, and when through, puts the question, Whether t shall be read a third time?

After progress in amending a bill in quasi-committee, a motion may be made to refer it to a special committee. If the motion prevails, it is equivalent in effect to the several votes that the committee rise, the House resume itself, discharge the committee of the whole, and refer the bill to a special committee. In that case, the amendments already made fall. But if the motion fails, the quasi-committee stands in *statu quo*.

How far does this 28th rule subject the House, when in quasi-committee, to the laws

which regulate the proceedings of committees of the whole? The particulars, in which these differ from proceedings in the House, are the following—1. In a committee, every member may speak as often as he pleases.—2. The votes of a committee may be rejected or altered when reported to the House.—3. A committee, even of the whole, cannot refer any matter to another committee.—4. In a committee, no previous question can be taken: the only means to avoid an improper discussion, is to move that the committee rise: and if it be apprehended that the same discussion will be attempted on returning into committee, the House can discharge them, and proceed itself on the business, keeping down the improper discussion by the previous question.—5. A committee cannot punish a breach of order, in the House, or in the gallery.—9 *Grey*, 113: it can only rise and report it to the House, who may proceed to punish. The 1st and 2d of these peculiarities attach to the quasi-committee of the Senate, as every day's practice proves; and seem to be the only ones to which the 28th rule meant to subject them: for it continues to be a House, and therefore, though it acts in some respects as a committee, in others it preserves its character as a House.—Thus, 3d. It is in the daily habit of referring its business to a special committee. —4th. It admits the previous question: if it did not, it would have no means of preventing an improper discussion; not being able, as the

committee is, to avoid it by returning into the House: for the moment it would resume the same subject there, the 20th rule declares it again a quasi-committee.—5th. It would doubtless exercise its powers as a House on any breach of order.—6th. It takes a question by Yea and Nay, as the House does.—7th. It receives messages from the President, and the other House.—8th. In the midst of a debate, it receives a motion to adjourn, and adjourns as a House, not as a committee.

SECTION XXXI.

BILL, SECOND READING IN THE HOUSE.

In Parliament, after the bill has been read a second time, if, on the motion and question, it be not committed, or if no proposition for commitment be made, the Speaker reads it by paragraphs, pausing between each, but putting no question but on amendments proposed; and when through the whole, he puts the question, Whether it shall be read a third time? if it came from the other House. Or, if originating with themselves, Whether it shall be engrossed and read a third time? The Speaker reads sitting, but rises to put a question. The clerk stands while he reads.

But the Senate of the United States is so much in the habit of making many and material amendments at the third reading, that it has become the practice not to engross a bill till it has passed. An irregular and dangerous practice; because, in this way, the paper which passes the Senate is not that which goes to the other House; and that which goes to the other House as the act of the Senate, has never been seen in Senate. In reducing numerous, difficult, and illegible amendments into the text, the Secretary may, with the most innocent intentions, commit errors, which can never again be corrected.*

The bill being now as perfect as its friends can make it, this is the proper stage for those, fundamentally opposed, to make their first attack. All attempts at other periods are with disjointed efforts; because many who do not ex-

* This difficulty has since been obviated by the followng Rule of the Senate:

"The final question, upon the second reading of every bill, resolution, constitutional amendment, or motion, originating in the Senate, and requiring three readings previous to being passed, shall be, "Whether it shall be engrossed and read a third time?" and no amendment shall be received for discussion at the third reading of any bill, resolution, amendment, or motion, unless by unanimous consent of the members present: but it shall at all times be in order, before the final passage of any such bill, resolution, constitutional amendment, or motion, to move its commitment; and should such commitment take place, and any amendment be reported by the committee, the said bill, resolution, constitutional amendment, or motion, shall be again read a second time, and considered as in committee of the whole, and then the aforesaid question shall be again put."—*Rule* 29.

pect to be in favour of the bill, ultimately, are willing to let it go on to its perfect state, to take time to examine it themselves, and to hear what can be said for it; knowing that, after all, they have sufficient opportunities of giving it their veto. Its two last stages, therefore, are reserved for this, that is to say, on the question, Whether it shall be engrossed and read a third time? and lastly, Whether it shall pass? The first of these is usually the most interesting contest; because then the whole subject is new and engaging, and the minds of the members having not yet been declared by any trying vote, the issue is the more doubtful. In this stage, therefore, is the main trial of strength between its friends and opponents; and it behoves every one to make up his mind decisively for this question, or he loses the main battle; and accident and management may, and often do, prevent a successful rallying on the next and last question, Whether it shall pass?

When the bill is engrossed, the title is to be endorsed on the back, and not within the bill.—*Hakew.* 250.

SECTION XXXII.

READING PAPERS.

Where papers are laid before the House, or referred to a committee, every member has a right to have them once read at the table, before he can be compelled to vote on them. But it is a great, though common error, to suppose that he has a right, *toties quoties*, to have acts, journals, accounts, or papers, on the table, read independently of the will of the House. The delay and interruption which this might be made to produce, evince the impossibility of the existence of such a right. There is indeed so manifest a propriety of permitting every member to have as much information as possible on every question on which he is to vote, that when he desires the reading, if it be seen that it is really for information, and not for delay, the Speaker directs it to be read without putting a question, if no one objects. But if objected to, a question must be put.—2 *Hats.* 117, 118.

It is equally an error to suppose, that any member has a right, without a question put, to lay a book or paper on the table, and have it read, on suggesting that it contains matter infringing on the privileges of the House.—2 *Hats.* 117, 118.

For the same reason, a member has not a right

to read a paper in his place, if it be objected to, without leave of the House. But this rigour is never exercised but where there is an intentional or gross abuse of the time and patience of the House.

A member has not a right even to read his own speech, committed to writing, without leave. This also is to prevent an abuse of time; and therefore is not refused, but where that is intended.—2 *Grey*, 227.

A report of a committee of the Senate on a bill from the House of Representatives being under consideration, on motion that the report of the committee of the House of Representatives on the same bill be read in Senate, it passed in the negative.—*Feb.* 28, 1793.

Formerly, when papers were referred to a committee, they used to be first read, but of late, only the titles; unless a member insists they shall be read, and then nobody can oppose it.—2 *Hats.* 117.

SECTION XXXIII.

PRIVILEGED QUESTIONS.

When a question is under debate, no motion shall be received but to adjourn, to lie on the table, to postpone

indefinitely, to postpone to a day certain, to commit, or to amend; which several motions shall have precedence in the order they stand arranged, and the motion for adjournment shall always be in order, and be decided without debate.—*Rule* 11.

When a question is under debate, no motion shall be received but to adjourn, to lie on the table, for the previous question, to postpone to a day certain, to commit or amend, to postpone indefinitely; which several motions shall have precedence in the order in which they are arranged: and no motion to postpone to a day certain, to commit, or to postpone indefinitely, being decided, shall be again allowed on the same day, and at the same stage of the bill or proposition. A motion to strike out the enacting words of a bill shall have precedence of a motion to amend, and, if carried, shall be considered equivalent to its rejection.—*Rules H. R.* 32.

It is no possession of a bill, unless it be delivered to the clerk to be read, or the Speaker reads the title.—*Lex. Parl.* 274.—*Elsynge, Mem.* 85.—*Ord. House Commons*, 64.

It is a general rule, that the question first moved and seconded shall be first put.—*Scob.* 28. 22—2 *Hats.* 81. But this rule gives way to what may be called privileged questions; and the privileged questions are of different grades among themselves.

A motion to adjourn, simply takes place of all others; for otherwise the House might be kept sitting against its will, and indefinitely. Yet this motion cannot be received after another question is actually put, and while the House is engaged in voting.

Orders of the day take place of all other ques-

tions, except for adjournment. That is to say, the question which is the subject of an order, is made a privileged one, *pro hac vice*. The order is a repeal of the general rule as to this special case. When any member moves, therefore, for the orders of the day to be read, no further debate is permitted on the question which was before the House; for if the debate might proceed, it might continue through the day, and defeat the order. This motion, to entitle it to precedence, must be for the orders generally, and not for any particular one; and if it be carried on the question, "Whether the House will now proceed to the orders of the day?" they must be read and proceeded on in the course in which they stand.—2 *Hats.* 83. For priority of order gives priority of right, which cannot be taken away but by another special order.

After these there are other privileged questions, which will require considerable explanation.

It is proper that every Parliamentary assembly should have certain forms of question, so adapted as to enable them fitly to dispose of every proposition which can be made to them. Such are, 1. The previous question: 2. To postpone indefinitely: 3. To adjourn to a definite day: 4. To lie on the table: 5. To commit: 6. To amend. The proper occasion for each of these questions should be understood.

1. When a proposition is moved, which it is useless or inexpedient now to express or discuss,

the previous question has been introduced for suppressing, for that time, the motion and its discussion.—3 *Hats.* 188, 189.

2. But as the previous question gets rid of it only for that day, and the same proposition may recur the next day, if they wish to suppress it for the whole of that session, they postpone it indefinitely.—3 *Hats.* 183. This quashes the proposition for that session, as an indefinite adjournment is a dissolution, or the continuance of a suit sine die is a discontinuance of it.

3. When a motion is made which it will be proper to act on, but information is wanted, or something more pressing claims the present time, the question or debate is adjourned to such a day within the session as will answer the views of the House.—2 *Hats.* 81. And those who have spoken before, may not speak again when the adjourned debate is resumed.—2 *Hats.* 73. Sometimes, however, this has been abusively used, by adjourning it to a day beyond the session, to get rid of it altogether, as would be done by an indefinite postponement.

4. When the House has something else which claims its present attention, but would be willing to reserve in their power to take up a proposition whenever it shall suit them, they order it to lie on their table. It may then be called for at any time.

5. If the proposition will want more amendment and digestion than the formalities of the

House will conveniently admit, they refer it to a committee.

6. But if the proposition be well digested, and may need but few and simple amendments, and especially if these be of leading consequence, they then proceed to consider and amend it themselves.

The Senate, in their practice, vary from this regular gradation of forms. Their practice, comparatively with that of Parliament, stands thus:

For the Parliamentary,	The Senate uses,
Postpmt. indefinite—	Postpmt. to a day beyond the session.
Adjournment.	—Postpmt. to a day within the session.
Lying on the table.	Postponement indefinite.
	Lying on the table.

In their 11th Rule, therefore, which declares, that while a question is before the Senate, no motion shall be received, unless it be for the previous question, or to postpone, commit or amend the main question, the term postponement must be understood according to their broad use of it, and not in its Parliamentary sense. Their rule then establishes as privileged questions, the previous question, postponement, commitment, and amendment.

But it may be asked, Have these questions any privilege among themselves? or are they so equal that the common principle of the "first moved, first put," takes place among them? This will need explanation. Their competitions may be as follow:

1. Prev. Qu. and Postpone Commit Amend	In the 1st, 2d, and 3d classes, and the 1st member of the 4th class, the rule "first moved, first put," takes place.
2. Postpone and Prev. Qu. Commit Amend	
3. Commit and Prev. Qu. Postpone Amend	
4. Amend and Prev. Qu. Postpone Commit	

In the 1st class, where the previous question is first moved, the effect is peculiar. For it not only prevents the after motion to postpone or commit from being put to question before it, but also from being put after it. For if the previous question be decided affirmatively, to wit, that the main question shall *now* be put, it would of course be against the decision to postpone or commit. And if it be decided negatively, to wit, that the main question shall not now be put, this puts the House out of possession of the main question, and consequently, there is nothing before them to postpone or commit. So that neither voting for nor against the previous question, will enable the advocates for postponing or committing to get at their object. Whether it may be amended, shall be examined hereafter.

2d Class—If postponement be decided affirmatively, the proposition is removed from before the House, and consequently, there is no ground for the previous question, commitment or amend-

ment. But, if decided negatively, that it shall not be postponed, the main question may then be suppressed by the previous question, or may be committed or amended.

The 3d class is subject to the same observations as the 2d.

The 4th class—Amendment of the main question first moved, and afterwards the previous question, the question of amendment shall be first put.

Amendment and postponement competing, postponement is first put, as the equivalent proposition to adjourn the main question would be in Parliament. The reason is, that the question for amendment is not suppressed by postponing or adjourning the main question, but remains before the House whenever the main question is resumed: and it might be that the occasion for other urgent business might go by, and be lost by length of debate on the amendment, if the House had it not in their power to postpone the whole subject.

Amendment and commitment. The question for committing, though last moved, shall be first put: because in truth it facilitates and befriends the motion to amend. *Scobell* is express—"On a motion to amend a bill, any one may, notwithstanding, move to commit it, and the question for commitment shall be first put."—*Scob.* 46.

We have hitherto considered the case of two or more of the privileged questions contending for privilege between themselves, when both

were moved on the original or main question; but now let us suppose one of them to be moved, not on the original primary question, but on the secondary one, *e. g.*

Suppose a motion to postpone, commit, or amend the main question, and that it be moved to suppress that motion by putting the previous question on it. This is not allowed: because it would embarrass questions too much to allow them to be piled on one another several stories high; and the same result may be had in a more simple way, by deciding against the postponement, commitment, or amendment.—2 *Hats.* 81, 2, 3, 4.

Suppose a motion for the previous question, or commitment or amendment of the main question, and that it be then moved to postpone the motion for the previous question, or for commitment or amendment of the main question: 1. It would be absurd to postpone the previous question, commitment, or amendment, alone, and thus separate the appendage from its principal: yet it must be postponed separately from its original, if at all: because the 8th Rule of the Senate says, that when a main question is before the House, no motion shall be received but to commit, amend, or pre-question the original question; which is the Parliamentary doctrine: therefore, the motion to postpone the secondary motion for the previous question, or for committing or amending, cannot be received: 2. This is a piling of questions one on another, which,

to avoid embarrassment, is not allowed: 3. The same result may be had more simply, by voting against the previous question, commitment, or amendment.

Suppose a commitment moved, of a motion for the previous question, or to postpone, or amend.

The 1st, 2d, and 3d reasons before stated, all hold good against this.

Suppose an amendment moved to a motion for the previous question? Answer: The previous question cannot be amended. Parliamentary usage as well as the 9th Rule of the Senate, has fixed its form to be, "Shall the main question be now put?" *i. e.* at this instant. And as the present instant is but one, it can admit of no modification. To change it to to-morrow, or any other moment, is without example, and without utility. But suppose a motion to amend a motion for postponement, as to one day instead of another, or to a special instead of indefinite time. The useful character of amendment gives it a privilege of attaching itself to a secondary and privileged motion. That is, we may amend a postponement of a main question. So we may amend a commitment of a main question, as by adding, for example, "with instruction to inquire," &c. In like manner, if an amendment be moved to an amendment, it is admitted. But it would not be admitted in another degree; to wit, to amend an amendment to an amendment of a main question. This

would lead to too much embarrassment. The line must be drawn somewhere; and usage has drawn it after the amendment to the amendment. The same result must be sought by deciding against the amendment to the amendment, and then moving it again as it was wished to be amended. In this form it becomes only an amendment to an amendment.

When motions are made for reference of the same subject to a select committee, and to a standing committee, the question on reference to the standing committee shall be first put.—*Rule* 35.

In filling a blank with a sum, the largest sum shall be first put to the question, by the 13*th Rule of the Senate*, contrary to the rule of Parliament, which privileges the smallest sum and longest time.—5 *Grey*, 179—2 *Hats.* 8. 83—3 *Hats.* 132, 133.—And this is considered to be not in the form of an amendment to the question; but as alternative, or successive originals. In all cases of time or number, we must consider whether the larger comprehends the lesser, as in a question to what day a postponement shall be, the number of a committee, amount of a fine, term of an imprisonment, term of irredeemability of a loan, or the *terminus in quem* in any other case. Then the question must begin a *maximo*. Or whether the lesser includs the greater, as in question on the limitation of the rate of interest, on what day the session shall be closed by adjournment, on what day the next shall commence, when an

act shall commence or the *terminus a quo* in any other case, where the question must begin *a minimo*. The object being not to begin at that extreme, which, and more, being within every man's wish, no one could negative it, and yet, if we should vote in the affirmative, every question for more would be precluded; but at that extreme which would unite few, and then to advance or recede till you get to a number which will unite a bare majority.—3 *Grey*, 376. 384, 385. "The fair question in this case is not that to which and more all will agree, whether there shall be addition to the question." 1 *Grey*, 365.

Another exception to the rule of priority is, when a motion has been made to strike out or agree to a paragraph. Motions to amend it are to be put to the question, before a vote is taken on striking out, or agreeing to the whole paragraph.

But there are several questions, which, being incidental to every one, will take place of every one, privileged or not; to wit, a question of order arising out of any other question, must be decided before that question.—2 *Hats*. 88.

A matter of privilege arising out of any question, or from a quarrel between two members, or any other cause, supersedes the consideration of the original question, and must be first disposed of.—2 *Hats*. 88.

Reading papers relative to the question before

the House. This question must be put before the principal one.—2 *Hats.* 88.

Leave asked to withdraw a motion. The rule of Parliament being, that a motion made and seconded is in possession of the House, and cannot be withdrawn without leave, the very terms of the rule imply that leave may be given, and consequently, may be asked and put to the question.

SECTION XXXIV.

THE PREVIOUS QUESTION.

When any question is before the House, any member may move a previous question, "Whether that question (called the main question) shall now be put?" If it pass in the affirmative, then the main question is to be put immediately, and no man may speak any thing further to it, either to add or alter.—*Memor. in Hakew.* 28—4 *Grey*, 27.

The previous question being moved and seconded, the question from the chair shall be, "Shall the main question be now put?" and if the nays prevail, the main question shall not then be put.—*Rule* 9.

This kind of question is understood by Mr. Hatsell to have been introduced in 1604.—2

Hats. 80, Sir Henry Vane introduced it.—2 *Grey*, 113, 114—3 *Grey*, 384. When the question was put in this form, "Shall the main question be put?" A determination in the negative suppressed the main question during the session; but since the words "now put" are used, they exclude it for the present only. Formerly indeed, only till the present debate was over; 4 *Grey*, 43; but now for that day and no longer.—2 *Grey*, 113, 114.

Before the question, "Whether the main question shall now be put?" any person might formerly have spoken to the main question, because otherwise he would be precluded from speaking to it at all.—*Mem. in Hakew.* 28.

The proper occasion for the previous question, is when a subject is brought forward of a delicate nature as to high personages, &c., or the discussions of which may call forth observations, which might be of injurious consequences. Then the previous question is proposed, and, in the modern usage, the discussion of the main question is suspended, and the debate confined to the previous question. The use of it has been extended abusively to other cases: but in these, it is an embarrassing procedure: its uses would be as well answered by other more simple Parliamentary forms, and therefore it should not be favoured, but restricted within as narrow limits as possible.

Whether a main question may be amended after the previous question on it has been mov-

ed and seconded?—2 *Hatsell*, 88, says, If the previous question has been moved and seconded, and also proposed from the chair, (by which he means, stated by the Speaker for debate,) it has been doubted whether an amendment can be admitted to the main question. He thinks it may, after the previous question moved and seconded; but not after it has been proposed from the chair.

In this case he thinks the friends to the amendment must vote that the main question be not now put; and then move their amended question, which being made new by the amendment, is no longer the same which has been just suppressed, and therefore may be proposed as a new one. But this proceeding certainly endangers the main question, by dividing its friends, some of whom may choose it unamended, rather than lose it altogether; while others of them may vote, as Hatsell advises, that the main question be not now put, with a view to move it again in an amended form. The enemies of the main question, by this manœuvre to the previous question, get the enemies to the amendment added to them on the first vote, and throw the friends of the main question under the embarrassment of rallying again as they can. To support his opinion, too, he makes the deciding circumstance, whether an amendment may or may not be made, to be, that the previous question has been proposed from the chair. But as the rule is, that the House is in possession of a

question as soon as it is moved and seconded, it cannot be more than possessed of it by its being also proposed from the chair. It may be said, indeed, that the object of the previous question being to get rid of a question, which it is not expedient should be discussed, this object may be defeated by moving to amend, and, in the discussion of that motion, involving the subject of the main question. But so may the object of the previous question be defeated by moving the amended question, as Mr. Hatsell proposes, after the decision against putting the original question. He acknowledges, too, that the practice has been to admit previous amendment, and only cites a few late instances to the contrary. On the whole, I should think it best to decide it *ab inconvenienti;* to wit, Which is most inconvenient, to put it in the power of one side of the House to defeat a proposition by hastily moving the previous question, and thus forcing the main question to be put unamended? or to put it in the power of the other side to force on, incidentally at least, a discussion which would be better avoided? Perhaps the last is the least inconvenience; inasmuch as the Speaker, by confining the discussion rigorously to the amendment only, may prevent their going into the main question; and inasmuch also as so great a proportion of the cases, in which the previous question is called for, are fair and proper subjects of public discussion, and ought not to be obstructed by a formality introduced for questions of a peculiar character.

SECTION XXXV.

AMENDMENTS.

On an amendment being moved, a member who has spoken to the main question may speak again to the amendment.—*Scob.* 23.

If an amendment be proposed inconsistent with one already agreed to, it is a fit ground for its rejection by the House; but not within the competence of the Speaker to suppress, as if it were against order. For, were he permitted to draw questions of consistence within the vortex of order, he might usurp a negative on important modifications, and suppress, instead of subserving, the legislative will.

Amendments may be made so as totally to alter the nature of the proposition; and it is a way of getting rid of a proposition, by making it bear a sense different from what was intended by the movers, so that they vote against it themselves.—2 *Hats.* 79. 4. 82. 84. A new bill may be ingrafted, by way of amendment, on the words, "Be it enacted," &c.—1 *Grey*, 190. 192.

If it be proposed to amend by leaving out certain words, it may be moved as an amendment to this amendment to leave out a part of the words of the amendment, which is equivalent to leaving them in the bill.---2 *Hats.* 80. 9. The Parliamentary question is always, Whether the words shall stand part of the bill?

When it is proposed to amend by inserting a paragraph, or part of one, the friends of the paragraph may make it as perfect as they can, by amendments, before the question is put for inserting it. If it be received, it cannot be amended afterwards, in the same stage, because the House has, on a vote, agreed to it in that form. In like manner, if it is proposed to amend by striking out a paragraph, the friends of a paragraph are first to make it as perfect as they can by amendments, before the question is put for striking it out. If, on the question, it be retained, it cannot be amended afterwards: because a vote against striking out is equivalent to a vote agreeing to in that form.

When it is moved to amend, by striking out certain words and inserting others, the manner of stating the question is, first to read the whole passage to be amended, as it stands at present; then the words proposed to be struck out: next those to be inserted; and, lastly, the whole passage, as it will be when amended. And the question, if desired, is then to be divided, and put first on striking out. If carried, it is next on inserting the words proposed. If that be lost, it may be moved to insert others.—2 *Hats.* 80. 7.

A motion is made to amend by striking out certain words, and inserting others in their place, which is negatived. Then it is moved to strike out the same words, and to insert others of a tenor entirely different from those first proposed. It negatived. Then it is moved to strike out the

same words, and to insert others of a tenor entirely different from those first proposed. It is negatived. Then it is moved to strike out the same words and insert nothing, which is agreed to. All this is admissible; because to stike out and insert A, is one proposition. To strike out and insert B, is a different proposition. And to strike out and insert nothing, is still different. And the rejection of one proposition does not preclude the offering a different one. Nor would it change the case, were the first motion divided by putting the question first on striking out, and that negatived. For as putting the whole motion to the quesiton at once would not have precluded, the putting the half of it, cannot do it.*

But if it had been carried affirmatively to strike out the words and to insert A, it could not afterwards be permitted to strike out A and insert B. The mover of B should have notified, while the insertion of A was under debate, that he would move to insert B. In which case, those who preferred it would join in rejecting A.

* In the case of a division of the question, and a decision against striking out, I advance, doubtingly, the opinion here expressed. I find no authority either way; and I know it may be viewed under a different aspect. It may be thought, that having decided separately not to strike out the passage, the same question for striking out cannot be put over again, though with a view to a different insertion. Still I think it more reasonable and convenient to consider the striking out, and insertion, as forming one proposition; but should readily yield to any evidence that the contrary is the practice in Parliament.

After A is inserted, however, it may be moved to strike out a portion of the original paragraph, comprehending A, provided the coherence to be struck out be so substantial as to make this effectively a different proposition. For then it is resolved into the common case of striking out a paragraph after amending it. Nor does any thing forbid a new insertion, instead of A and its coherence.

In Senate, January 25, 1798, a motion to postpone until the second Tuesday in February, some amendments proposed to the Constitution. The words, 'until the second Tuesday in February,' were struck out by way of amendment. Then it was moved to add, 'until the first day of June.' Objected, that it was not in order, as the question should first be put on the longest time; therefore, a shorter time decided against, a longer cannot be put to question. It was answered, that this rule takes place only in filling blanks for time. But when a specific time stands part of a motion, that may be struck out as well as any other part of the motion; and when struck out a motion may be received to insert any other. In fact, it is not till they are struck out, and a blank for the time thereby produced, that the rule can begin to operate, by receiving all the propositions for different times, and putting the questions successively on the longest. Otherwise, it would be in the power of the mover, by inserting originally a short time, to preclude the possibility of a longer. For, till

the short time is struck out, you cannot insert a longer; and if, after it is struck out, you cannot do it, then it cannot be done at all. Suppose the first motion had been to amend by striking out 'the second Tuesday in February,' and inserting instead thereof, 'the first of June.' It would have been regular then to divide the question, by proposing first the question to strike out, and then that to insert. Now this is precisely the effect of the present proceeding; only instead of one motion and two questions, there are two motions and two questions, to effect it: the motion being divided as well as the question.

When the matter contained in two bills might be better put into one, the manner is to reject the one, and incorporate its matter into another bill by way of amendment. So, if the matter of one bill would be better distributed into two, any part may be struck out by way of amendment, and put into a new bill. If a section is to be transposed, a question must be put on striking it out where it stands, and another for inserting it in the place desired.

A bill passed by the one House, with blanks. These may be filled up by the other, by way of amendments, returned to the first, as such, and passed—3 *Hats.* 83.

The number prefixed to the section of a bill being merely a marginal indication, and no part of the text of the bill, the clerk regulates that; the House or committee is only to amend the text.

SECTION XXXVI.

DIVISION OF THE QUESTION.

If a question contain more parts than one, it may be divided into two or more questions—*Mem. in Hakew.* 29. But not as the right of an individual member, but with the consent of the House. For who is to decide whether a question is complicated or not? where it is complicated? into how many propositions it may be divided? The fact is, that the only mode of separating a complicated question is by moving amendments to it; and these must be decided by the House on a question, unless the House orders it to be divided: as on the question, Dec. 2, 1640, making void the election of the Knights for Worcester, on a motion it was resolved to make two questions of it, to wit, one on each Knight.—2 *Hats.* 85, 86. So, wherever there are several names in a question, they may be divided and put one by one.—9 *Grey*, 444. So, 1729, April 17, on an objection that a question was complicated, it was separated by amendment.—2 *Hats.* 79. 5.

The soundness of these observations will be evident from the embarrassments produced by the 12th rule of the Senate, which says, 'If the question in debate contain several points, any member may have the same divided:' but, on a motion to strike out and insert, it shall not be in order to move for a division of the question; but the rejection of a motion to strike out and insert

one proposition shall not prevent a motion to strike out and insert a different proposition, nor prevent a subsequent motion, simply to strike out: nor shall the rejection of a motion, simply to strike out, prevent a subsequent motion to strike out and insert.

1798, May 30, the alien bill in quasi-committee. To a section and proviso in the original, had been added two new provisos by way of amendment. On a motion to strike out the section as amended, the question was desired to be divided. To do this, it must be put first on striking out either the former proviso, or some distinct member of the section. But when nothing remains but the last member of the section, and the provisos, they cannot be divided so as to put the last member to question by itself; for the provisos might thus be left standing alone as exceptions to a rule when the rule is taken away; or the new provisos might be left to a second question, after having been decided on once before at the same reading; which is contrary to rule. But the question must be on striking out the last member of the section as amended. This sweeps away the exceptions with the rule, and relieves from inconsistence. A question to be divisible, must comprehend points so distinct and entire, that one of them being taken away, the other may stand entire. But a proviso or exception, with an enacting clause, does not contain an entire point or proposition.

May 31. The same bill being before the Senate. There was a proviso, that the bill should

not extend, 1. To any foreign minister; nor 2. To any person to whom the President should give a passport; nor 3. To any alien merchant, conforming himself to such regulations as the President shall prescribe; and division of the question into its simplest elements was called for. It was divided into four parts, the 4th taking in the words, 'conforming himself,' &c. It was objected, that the words 'any alien merchant' could not be separated from their modifying words, 'conforming,' &c., because these words, if left by themselves, contain no substantive idea, will make no sense. But admitting that the divisions of a paragraph into separate questions must be so made as that each part may stand by itself, yet the House having, on the question, retained the two first divisions, the words, 'any alien merchant,' may be struck out, and their modifying words will then attach themselves to the proceeding description of persons, and become a modification of that description.

When a question is divided, after the question on the first member, the 2d is open to debate and amendment: because it is a known rule, that a person may rise and speak at any time before the question has been completely decided, by putting the negative, as well as the affirmative side. But the question is not completely put when the vote has been taken on the first member only. One half of the question, both affirmative and negative, still remains to be put.—

See *Executive Journ. June.* 25, 1795. The same decision by President Adams.

SECTION XXXVII.

CO-EXISTING QUESTIONS.

It may be asked, whether the House can be in possession of two motions or propositions at the same time? So that, one of them being decided, the other goes to question without being moved anew? The answer must be special. When a question is interrupted by a vote of adjournment, it is thereby removed from before the House; and does not stand *ipso facto* before them at their next meeting, but must come forward in the usual way: So, when it is interrupted by the order of the day. Such other privileged questions also as dispose of the main question (*e. g.* the previous question, postponement, or commitment) remove it from before the House. But it is only suspended by a motion to amend, to withdraw, to read papers, or by a question of order or privilege, and stands again before the House when these are decided. None but the class of privileged questions can be brought forward while there is another question before the House; the rule being, that when a

motion has been made and seconded, no other can be received except it be a privileged one.

SECTION XXXVIII.

EQUIVALENT QUESTIONS.

If, on a question for rejection, a bill be retained, it passes of course to its next reading.—*Hakew.* 141.—*Scob.* 42, and a question for a second reading determined negatively, is a rejection without farther question.—4 *Grey*, 149. And see *Elsynge's Memor.* 42, in what cases questions are to be taken for rejection.

Where questions are perfectly equivalent, so that the negative of the one amounts to the affirmative of the other, and leaves no other alternative, the decision of the one concludes necessarily the other.—4 *Grey*, 157. Thus the negative of striking out amounts to the affirmative of agreeing; and therefore to put a question on agreeing after that on striking out, would be to put the same question in effect twice over. Not so in questions of amendments between the two Houses. A motion to recede being negatived, does not amount to a positive vote to insist, because there is another alternative, to wit, to adhere.

A bill originating in one House, is passed by the other with an amendment. A motion in the originating House, to agree to the amendment is negatived. Does these result from this vote of disagreement? or must the question on disagreement be expressly voted? The questions respecting amendments from another House, are 1st. To agree; 2d. Disagree; 3d. Recede; 4th. Insist; 5th. Adhere.

1st. To agree. } Either of these concludes
2d. To disagree. } the other necessarily, for the positive of either exactly the equivalent of the negative of the other, and no other alternative remains. On either motion, amendments to the amendment may be proposed; *e. g.* if it be moved to disagree, those who are for the amendment have a right to propose amendments, and to make it as perfect as they can, before the question of disagreeing is put.

3d. To recede. You may then either insist or adhere.
4th. To insist. You may then either recede or adhere.
5th. To adhere. You may then either recede or insist.

Consequently, the negative of these is not equivalent to a positive vote the other way. It does not raise so necessary an implication as may

authorize the Secretary by inference to enter another vote: for two alternatives still remain, either of which may be adopted by the House.

SECTION XXXIX.

THE QUESTION.

The question is to be put first on the affirmative, and then on the negative side.

After the Speaker has put the affirmative part of the question, any member who has not spoken before the question, may rise and speak before the negative be put. Because it is no full question till the negative part be put.—*Scob.* 23—*Hats.* 73.

But in small matters, and which are of course, such as receiving petitions, reports, withdrawing motions, reading papers, &c. the Speaker most commonly supposes the consent of the House, where no objection is expressed, and does not give them the trouble of putting the question formally.—*Scob.* 22—2 *Hats.* 87. 2. 87—5 *Grey*, 129—9 *Grey*, 301.

SECTION XL.

BILLS, THIRD READING.

To prevent bills from being passed by surprise, the House, by a standing order, directs that they shall not be put on their passage before a fixed hour, naming one at which the House is commonly full. *Hakew.* 153.

The usage of the Senate is, not to put bills on their passage till noon.

A bill reported and passed to the third reading, cannot on that day be read the third time and passed. Because this would be to pass on two readings on the same day. At the third reading, the clerk reads the bill, and delivers it to the Speaker, who states the title, that it is the third time of reading the bill, and that the question will be, Whether it shall pass? Formerly, the Speaker, or those who prepared a bill, prepared also a breviate or summary statement of its contents, which the Speaker read when he declared the state of the bill at the several readings. Sometimes, however, he read the bill itself, especially on its passage.—*Hakew.* 136, 137. 153—*Coke*, 22. 115. Latterly, instead of this, he, at the third reading, states the whole contents of the bill, verbatim; only instead of reading the formal parts, 'Be it enacted,' &c. he states, that 'the preamble recites so and so;

the 1st section enacts, that, &c. the second section enacts,' &c.

But in the Senate of the United States, both of these formalities are dispensed with; the breviate presenting but an imperfect view of the bill, and being capable of being made to present a false one; and the full statement being an useless waste of time, immediately after a full reading by the clerk; and especially as every member has a printed copy in his hand.

A bill, on the third reading, is not to be committed for the matter or body thereof: but, to receive some particular clause or proviso, it hath been sometimes suffered, but as a thing very unusual.—*Hakew.* 156; thus, 27 *El.* 1584, a bill was committed on the third reading, having been formerly committed on the second; but is declared not usual.—*D'Ewes*, 137, *col.* 2. 414, *col.* 2.

When an essential provision has been omitted, rather than erase the bill, and render it suspicious, they add a clause on a separate paper, engrossed and called a rider, which is read, and put to the question three times.—*Elsynge's Memorials*, 59—6 *Grey*, 335—1 *Blackst.* 183. For examples of riders, see 3 *Hats.* 121, 122, 124. 126. Every one is at liberty to bring in a rider without asking leave.—10 *Grey*, 52.

It is laid down as a general rule, that amendments proposed at the second reading shall be twice read, and those proposed at the third reading thrice read; as also all amendments

from the other house.—*Town. col.* 19, 23, 24, 25, 26, 27, 28.

It is with great, and almost with invincible reluctance, that amendments are admitted at this reading, which occasion erasures or interlineations. Sometimes the proviso has been cut off from a bill; sometimes erased.—9 *Grey*, 513.

This is the proper stage for filling up blanks; for if filled up before, and now altered by erasure, it would be peculiarly unsafe.

At this reading, the bill is debated afresh, and for the most part is more spoken to, at this time, than on any of the former readings. *Hakew.* 153.

The debate on the question, Whether it should be read a third time? has discovered to its friends and opponents the arguments on which each side relies, and which of these appear to have influence with the House; they have had time to meet them with new arguments, and to put their old ones into new shapes. The former vote has tried the strength of the first opinion, and furnished grounds to estimate the issue; and the question now offered for its passage, is the last occasion which is ever to be offered for carrying or rejecting it.

When the debate is ended, the Speaker, holding the bill in his hand, puts the question for its passage, by saying, 'Gentlemen, all you who are of opinion that this bill shall pass, say aye;' and after the answer of ayes, 'All those of the contrary opinion, say no.'—*Hakew.* 154.

After the bill has passed, there can be no further alteration of it in any point.—*Hakew.* 159.

SECTION XLI.

DIVISION OF THE HOUSE.

The affirmative and negative of the question having been both put and answered, the Speaker declares whether the yeas or nays have it by the sound, if he be himself satisfied, and it stands as the judgment of the House. But if he be not himself satisfied which voice is the greater, or if, before any other member comes into the House, or before any new motion is made, (for it is too late after that,) any member shall rise and declare himself dissatisfied with the Speaker's decision, then the Speaker is to divide the House.—*Scob.* 24—2 *Hats.* 140.

When the House of Commons is divided, the one party goes forth, and the other remains in the House. This has made it important which go forth, and which remain; because the latter gain all the indolent, the indifferent, and inattentive. Their general rule, therefore, is, that those who give their vote for the preservation of the orders of the House, shall stay in, and those who are for introducing any new matter or alteration, or proceeding, contrary to the established course, are to go out. But this rule is

subject to many exceptions and modifications. 2 *Rush. p.* 3, *fol.* 92—*Scob.* 43. 52—*Co.* 12. 116—*D'Ewes*, 505, *col.* 1—*Mem. in Hakew.* 25. 29; as will appear by the following statement of who go forth.

Petition that it be received,* Read,	Ayes.	
Lie one the table,	Noes.	
Rejected after refusal to lie on the table,	Noes.	
Referred to a committee, or farther proceeding,	Ayes.	
Bill, that it be brought in,	Ayes.	
Read 1st or 3d time,	Ayes.	
Engrossed or read 2d time,	Ayes.	
Proceeding on every other stage,	Ayes.	
Committed,	Ayes.	
To a Committee of the whole,	Noes.	
To a select committee,	Ayes.	
Report of bill to lie on table,	Noes.	
Be *now* read,	Ayes.	
Be taken into consideration three months hence,	50 P. J. 251.	
Amendments be read a 2d time,	Noes.	
Clause offered on report of Bill be read 2d time,	Ayes.	
For receiving a clause,		334
With amendments be engrossed,		

* Noes, 9 Grey, 365.

That a bill be now read a 3d time, - - - - -	Noes. 398.
Receive a rider, - -	260.
Pass, - - -	Ayes 259.
Be printed, - - -	
Committees. That A take the chair. - - -	
To agree to the whole or any part of report. - -	
That the House do *now* resolve into a committee.	291
Speaker. That he now leave the chair, after order to go into committee.	Noes.
That he issue warrant for a new visit. - - - -	
Member. That none be absent without leave.	
Witness. That he be further examined, -	Ayes 344
Previous questions . -	Noes.
Blanks. That they be filled with the largest sum.	Ayes.
Amendments. That words stand part of. - -	
Lords. That their amendment be read a 2d time.	Ayes.
Messenger be received. -	Ayes.
Orders of the day to be now read, if before 2 o'clock.	
If after 2 o'clock. - -	Noes.

Adjournment, till the next sitting day, if before 4 o'clock. - -	Ayes.
If after 4 o'clock. - -	Noes
Over a sitting day (unless a previous resolution.)	Ayes.
Over the 30th of January.	Noes.
For sitting on Sunday, or any other day, not being a sitting day.	Ayes.

The one party being gone forth, the Speaker names two tellers from the affirmative, and two from the negative side, who first count those sitting in the House, and report the number to the Speaker. Then they place themselves within the door, two on each side, and count those who went forth, as they come in, and report the number to the Speaker.—*Mem. in Hakew.* 26.

A mistake in the report of the tellers may be rectified after the report made.—2 *Hats.* 145. Note.

But, in both Houses of Congress, all those intricacies are avoided. The ayes first rise, and are counted, standing in their places, by the President or Speaker. Then they sit, and the noes rise, and are counted in like manner.

In Senate, if they be equally divided, the Vice President announces his opinion, which decides.

The Constitution, however, has directed that 'the yeas and nays of the members of either House, on any question, shall, at the desire of one fifth of those present, be entered on the journal.' And again, that in all cases of re-considering a bill, disapproved by the President, and returned with his objections, 'the votes of both Houses shall be determined by the yeas and nays, and

the names of the persons voting for and against the bill, shall be entered on the journals of each House respectively.'

By the 16th rule of the Senate, when the yeas and nays shall be called for by one-fifth of the members present, each member called upon shall, unless for special reasons he be excused by the Senate, declare openly, and without debate, his assent or dissent to the question. In taking the yeas and nays, and upon the call of the House, the names of the members shall be taken alphabetically.

When the yeas and nays shall be taken upon any question, in pursuance of the above rule, no member shall be permitted, under any circumstances whatever, to vote after the decision is announced from the Chair.

When it is proposed to take the vote by yeas and nays, the President or Speaker states, that 'The question is, whether, *e. g.* the bill shall pass? That it is proposed, that the yeas and nays shall be entered on the journal. Those therefore, who desire it, will rise.' If he finds and declares that one-fifth have risen, he then states, that 'those who are of opinion that the bill shall pass, are to answer in the affirmative; those of the contrary opinion, in the negative.' The clerk then calls over the names alphabetically, notes the yea or nay of each, and gives the list to the President or Speaker, who declares the result. In Senate, if there be an equal division, the Secretary calls on the Vice President, and notes his affirmative or negative, which becomes the decision of the House.

In the House of Commons, every member must give his vote the one way or the other.—*Scob.* 24. As it is not permitted to any one to withdraw who is in the House when the question is put, nor is any one to be told in the division who was not in when the question was put. —2 *Hats.* 140.

This last position is always true when the vote is by yeas and nays; where the negative as well as the affirmative of the question is stated by the President at the same time, and the vote of both sides begins and proceeds *pari passu.* It is true, also, when the question is put in the usual way, if the negative has also been put. But if it has not, the member entering, or any other member may speak, and even propose amendments, by which the debate may be opened again, and the question greatly deferred. And, as some who have answered aye, may have been changed by the new arguments, the affirmative must be put over again. If, then, the member entering may, by speaking a few words, occasion a repetition of the question, it would be useless to deny it on his simple call for it.

While the House is telling no member may speak, or move out of his place; for, if any mistake be suspected, it must be told again.—*Mem in Hakew.* 26—2 *Hats.* 143.

If any difficulty arises in point of order, during the division, the Speaker is to decide peremptorily, subject to the future censure of the House, if irregular. He sometimes permits old experienced members to assist him with their advice, which they do sitting in their seats, covered to avoid the appearance of debate; but this can only be with the Speaker's leave, else the division might last several hours.—2 *Hats,* 143.

The voice of the majority decides. For the

lex majoris partis, is the law of all councils, elections, &c. where not otherwise expressly provided.—*Hakew.* 93. But, if the House be equally divided, '*semper presumatur pro negante:*' that is, the former law is not to be changed but by a majority.—*Towns. col.* 134.

But, in the Senate of the United States, the Vice-president decides, when the House is divided.—*Const. U. S. Art. I. Sec. II.*

When, from counting the House, on a division, it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division, and must be resumed at that point on any future day.—2 *Hats.* 126.

1606, May 1, on a question, whether a member, having said Yea, may afterwards sit and change his opinion? A precedent was remembered by the Speaker, of Mr. Morris, attorney of the wards, in 39 *Eliz.* who in like case changed his opinion.—*Mem. in Hakew.* 27.

SECTION XLII.

TITLE.

After the bill has passed, and not before, the title may be amended, and is to be fixed by a question; and the bill is then sent to the other House.

SECTION XLIII.

RE-CONSIDERATION.

When a question has been once made and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the re-consideration thereof: but no motion for the re-consideration of any vote shall be in order after a bill, resolution, message, report, amendment, or motion, upon which the vote was taken, shall have gone out of the possession of the Senate, announcing their decision; nor shall any motion for re-consideration be in order, unless made on the same day on which the vote was taken, or within the two next days of actual session of the Senate thereafter.—*Rule* 20.

1798, Jan. A bill on its second reading, being amended, and on the question, whether it shall be read a third time negatived, was restored by a decision to re-consider that question. Here the votes of negative and re-consideration, like positive and negative quantities in equation, destroy one another, and are as if they were expunged from the journals. Consequently, the bill is open for amendment, just so far as it was the moment preceding the question for the third reading. That is to say, all parts of the bill are open for amendment, except those on which votes have been already taken in its present stage. So also may it be re-committed.

The rule permitting a re-consideration of a question affixing to it no limitation of time or circumstance, it may be asked whether there is no limitation? If, after the vote, the paper on which it is passed has been parted with, there can be no re-consideration: as if a vote has been for the passage of a bill, and the bill has been sent to the other House. But where the paper remains, as on a bill rejected, when, or under what circumstances, does it cease to be susceptible of re-consideration? This re-

mains to be settled, unless a sense that the right of reconsideration is a right to waste the time of the House in repeated agitations of the same question, so that it shall never know when a question is done with, should induce them to reform this anomalous proceeding.*

In Parliament, a question once carried, cannot be questioned again, at the same session; but must stand as the judgment of the House.—*Towns. col.* 67—*Mem. in Hakew.* 33. And a bill once rejected, another of the same substance cannot be brought in again the same session.—*Hakew.* 158—6 *Grey*, 392. But this does not extend to prevent putting the same questions in different stages of a bill; because every stage of a bill submits the whole and every part of it to the opinion of the House, as open for amendment, either by insertion or omission, though the same amendment has been accepted or rejected in a former stage. So in reports of committees, *e. g.* report of an address, the same question is before the House, and open for free discussion.—*Towns. col.* 26—2 *Hats.* 98. 100, 101. So orders of the House, or instructions to committees, may be discharged. So a bill begun in one House, sent to the other, and there rejected, may be renewed again in that other, passed, and sent back.—*Ib.* 92—3 *Hats.* 161. Or, if, instead of being rejected, they read it once, and lay it aside, and put it off a month,

* This defect is remedied by Rule 20, cited above, which has been adopted since the original edition of this work was published.

they may order in another to the same effect, with the same or a different title.—*Hakew.* 97, 98.

Divers expedients are used to correct the effects of this rule; as, by passing an explanatory act, if any thing has been omitted or ill-expressed, 3 *Hats.* 278; or an act to enforce, and make more effectual an act, &c. or to rectify mistakes in an act, &c. or a committee on one bill may be instructed to receive a clause to rectify the mistakes of another. Thus, June 24, 1685, a clause was inserted in a bill for rectifying a mistake committed by a clerk in engrossing a bill of reply.—2 *Hats.* 194. 6. Or the session may be closed for one, two, three, or more days, and a new one commenced. But then all matters depending must be finished, or they fall, and are to begin *de novo.*—2 *Hats.* 94. 98. Or a part of the subject may be taken up by another bill, or taken up in a different way.—6 *Grey*, 304. 316.

And in cases of the last magnitude, this rule has not been so strictly and verbally observed as to stop indispensable proceedings altogether.—2 *Hats.* 92. 98. Thus, when the address on the preliminaries of peace, in 1782, had been lost by a majority of one; on account of the importance of the question, and smallness of the majority, the same question in substance, though with words not in the first, and which might change the opinion of some members, was brought on again and carried: as the motives

for it were thought to outweigh the objection of form.—2 *Hats.* 99, 100.

A second bill may be passed, to continue an act of the same session; or to enlarge the time limited for its execution.—2 *Hats.* 95. 98. This is not in contradiction to the first act.

SECTION XLIV.

BILLS SENT TO THE OTHER HOUSE.

All bills passed in Senate shall, before they are sent to the House of Representatives, be examined by a committee, consisting of three members, whose duty it shall be to examine all bills, amendments, resolutions, or motions, before they go out of the possession of the Senate, and to make report that they are correctly engrossed; which report shall be entered on the Journal.—*Rule* 33.

A bill from the other House is sometimes ordered to lie on the table.—2 *Hats.* 97.

When bills, passed in one House and sent to the other, are grounded on special facts requiring proof, it is usual, either by message, or at a conference, to ask the grounds and evidence; and this evidence, whether arising out of papers, or from the examination of witnesses, is immediately communicated.—3 *Hats.* 48.

SECTION XLV.

AMENDMENTS BETWEEN THE HOUSES.

When either House, *e. g.* the House of Commons, sends a bill to the other, the other may pass it with amendments. The regular progression in this case is, that the Commons disagree to the amendment; the Lords insist on it; the Commons insist on their disagreement; the Lords adhere to their amendment; the Commons adhere to their disagreement. The term of insisting may be repeated as often as they choose, to keep the question open. But the first adherence by either, renders it necessary for the other side to recede or adhere also; when the matter is usually suffered to fall.—10 *Grey*, 148. Latterly, however, there are instances of their having gone to a second adherence. There must be an absolute conclusion of the subject somewhere, or otherwise transactions between the Houses would be endless.—3 *Hats.* 268, 270. The term of insisting, we are told by Sir John Trevor, was then [1679] newly introduced into Parliamentary usage, by the Lords—7 *Grey*, 94. It was certainly a happy innovation, as it multiplies the opportunities of trying modifications which may bring the Houses to a concurrence. Either House, however, is free to pass over the term of insisting, and to adhere in the first

instance.—10 *Grey*, 146. But it is not respectful to the other. In the ordinary Parliamentary course, there are two free conferences at least before adherence.—10 *Grey*, 147.

Either House may recede from its amendment, and agree to the bill; or recede from their disagreement to the amendment, and agree to the same absolutely, or with an amendment. For here the disagreement and receding destroy one another, and the subject stands as before the disagreement.—*Elsynge*, 23. 27—9 *Grey*, 476.

But the House cannot recede from or insist on, its own amendment with an amendment, for the same reason that it cannot send to the other House an amendment to its own act after it has passed the act. They may modify an amendment from the other House by ingrafting an amendment on it, because they have never assented to it; but they cannot amend their own amendment, because they have, on the question, passed it in that form; 9 *Grey*. 353—10 *Grey*, 240. In Senate, March 29, 1798. Nor where one House has adhered to their amendment, and the other agrees with an amendment, can the first House depart from the form which they have fixed by an adherence.

In the case of a money bill, the Lords proposed amendments, become, by delay, confessedly necessary. The Commons, however, refused them, as infringing on their privilege as to money bills, but they offered themselves to add to the bill a proviso to the same effect, which had

no coherence with the Lords' amendments, and urged, that it was an expedient warranted by precedent, and not unparliamentary in a case become impracticable, and irremediable in any other way.—3 *Hats.* 256. 266. 270. 271. But the Lords refused and the bill was lost, 1 *Chand.* 288. A like case, 1 *Chand.* 311. So the Commons resolve, that it is unparliamentary to strike out at a conference any thing in a bill which hath been agreed and passed by both Houses 6 *Grey*, 274—1 *Chand.* 312.

A motion to amend an amendment from the other House, takes precedence of a motion to agree or disagree.

A bill originating in one House, is passed by the other with an amendment.

The originating House agrees to their amendment with an amendment. The other may agree to their amendment with an amendment; that being only in the second and not the third degree. For, as to the amending House, the first amendment with which they passed the bill is a part of its text; it is the only text they have agreed to. The amendment to that text by the originating House, therefore, is only in the 1st degree, and the amendment to that again by the amending House is only in the 2d, to wit, an amendment to an amendment, and so admissible. Just so when, on a bill from the originating House, the other, at its 2d reading, makes an amendment; on the 3d reading, this amendment is become the text of the bill, and if an amend-

ment to it be moved, an amendment to that amendment may also be moved, as being only in the second degree.

SECTION XLVI.

CONFERENCES.

It is on the occasion of amendments between the Houses that conferences are usually asked: but they may be asked in all cases of difference of opinion between the two houses on matters depending between them. The request of a conference, however, must always be by the House which is possessed of the papers.—3 *Hats.* 71—1 *Grey*, 425.

Conferences may be either simple or free. At a conference simply, written reasons are prepared by the House asking it, and they are read and delivered without debate, to the managers of the other House at the conference; but are not then to be answered.—3 *Grey*, 144. The other House then, if satisfied, vote the reasons satisfactory, or say nothing; if not satisfied, they resolve them not satisfactory, and ask a conference on the subject of the last conference, where they read and deliver in like manner written answers to those reasons.—3 *Grey*, 183.

They are meant chiefly to record the justification of each House to the nation at large, and to posterity, and in proof that the miscarriage of a necessary measure is not imputable to them.—3 *Grey*, 255. At free conferences, the managers discuss *viva voce* and freely, and interchange propositions for such modifications as may be made in a Parliamentary way, and may bring the sense of the two houses together. And each party reports in writing to their respective houses the substance of what is said on both sides, and it is entered in their journals.—6 *Grey*, 220—3 *Hats.* 280. (*Vide Joint Rules*, 1.) This report cannot be amended or altered as that of a committee may be.—*Journ. Senate, May* 24, 1796.

A conference may be asked, before the House asking it has come to a resolution of disagreement, insisting or adhering.—3 *Hats.* 269. 341. In which case the papers are not left with the other conferees, but are brought back to be the foundation of the vote to be given. And this is the most reasonable and respectful proceeding. For, as was urged by the Lords on a particular occasion, 'it is held vain, and below the wisdom of Parliament, to reason or argue against fixed resolutions, and upon terms of impossibility to persuade.'—3 *Hats.* 226. So the Commons say, 'an adherence is never delivered at a free conference, which implies debate.'—10 *Grey*, 147. And on another occasion, the Lords made it an objection that the Commons had asked a

free conference after they had made resolutions of adhering. It was then affirmed, however, on the part of the Commons, that nothing was more Parliamentary than to proceed with free conferences after adhering; 3 *Hats.* 269; and we do in fact see instances of conference or of free conference, asked after the resolution of disagreeing.—3 *Hats.* 251. 253. 260. 286. 291. 316. 349. of insisting, *ib.* 280. 296. 299. 319. 322. 355. of adhering, 269, 270. 283. 300. and even of a second or final adherence.—3 *Hats.* 270. And in all cases of conference asked after a vote of disagreement, &c. the conefrees of the House asking it are to leave the papers with the conferees of the other; and in one case where they refused to receive them, they were left on the table in the conference chamber.—3 *Hats.* 271. 317. 323. 354—10 *Grey*, 146.

After a free conference the usage is to proceed with free conferences, and not to return again to a conference.—3 *Hats.* 270—9 *Grey*, 229.

After a conference denied, a free conference may be asked.—1 *Grey*, 45.

When a conference is asked, the subject if it must be expressed, or the conference not agreed to.—*Ord. H. Com.* 89—1 *Grey*, 425—7 *Grey*, 31. They are sometimes asked to inquire concerning an offence or default of a member of the other House.—6 *Grey*, 181—1 *Chand.* 304; or the failure of the other House to present to the King a bill passed by both Houses.—8 *Grey*,

302; or on information received, and relating to the safety of the nation.—10 *Grey*, 171, or when the methods of Parliament are thought by the one House to have been departed from by the other, a conference is asked to come to a right understanding thereon.—10 *Grey*, 148. So, when an unparliamentary message has been sent, instead of answering it, they ask a conference.— 3 *Grey*, 155. Formerly, an address, or articles of impeachment, or a bill with amendments, or a vote of the House, or concurrence in a vote, or a message from the King, were sometimes communicated by way of conference. —7 *Grey*, 128. 300. 387—7 *Grey*, 80—8 *Grey*, 210. 255—1 *Torbuck's Deb.* 278—10 *Grey*, 293—1 *Chandler*, 49, 287. But this is not modern practice.—8 *Grey*, 255.

A conference has been asked, after the first reading of a bill .—1 *Grey*, 194. This is a singular instance.

SECTION XLVII.

MESSAGES.

Messages between the Houses are to be sent only while both Houses are sitting.—3 *Hats.* 15. They are received during a debate, without adjourning the debate.—3 *Hats.* 22.

In Senate, the messengers are introduced in any state of business, except—1 .While a question is putting.—2. While the yeas and nays are calling.—3. While the ballots are calling. The first case is short: the second and third are cases where any interruption might occasion errors difficult to be corrected.—*Rule* 46.

In the House of Representatives, as in Parliament, if the House be in a committee when a messenger attends, the Speaker takes the chair to receive the message, and then quits it to return into a committee, without any question or interruption.—4 *Grey*, 226.

Messengers are not saluted by the members, but by the Speaker, for the House.—2 *Grey*, 253. 274.

If messengers commit an error in delivering their message, they may be admitted, or called in, to correct their message.—4 *Grey*, 41. Accordingly, March 13, 1800, the Senate having made two amendments to a bill from the House of Representatives, their Secretary, by mistake, delivered one only; which being inadmissible by itself, that House disagreed, and notified the Senate of their disagreement. This produced a discovery of the mistake. The Secretary was sent to the other House to correct his mistake, the correction was received, and the two amendments acted on *de novo*.

As soon as the messenger, who has brought bills from the other House, has retired, the Speaker holds the bill in his hand, and acquaints the House, ‘ that the other House have, by their messenger, sent certain bills,’ and then reads

their titles, and delivers them to the clerk to be safely kept, till they shall be called for to be read.—*Hakew*, 178.

It is not the usage for one House to inform the other by what numbers a bill has passed.—10 *Grey*, 150. Yet they have sometimes recommended a bill as of great importance to the consideration of the House to which it is sent.—3 *Hats.* 25. Nor when they have rejected a bill from the other House, do they give notice of it; but it passes sub-silentio, to prevent unbecoming altercations.—1 *Black.* 133.

But in Congress, the rejection is notified by message to the House in which the bill originated.—*Joint Rules*, 12.

A question is never asked by the one House, of the other, by way of message, but only at a conference; for this is an interrogatory, not a message.—3 *Grey*, 151. 181.

When a bill is sent by one House to the other, and is neglected, they may send a message to remind them of it.—3 *Hats.* 25—5 *Grey*, 154. But if it be mere inattention, it is better to have it done informally, by communications between the Speakers, or members of the two Houses.

Where the subject of a message is of a nature that it can properly be communicated to both Houses of Parliament, it is expected that this communication should be made to both on the same day. But where a message was accompanied with an original declaration, signed by

the party, to which the message referred, its being sent to one House, was not noticed by the other, because the declaration, being original, could not possibly be sent to both Houses at the same time.—2 *Hats.* 260, 261, 262.

The King having sent original letters to the Commons, afterwards desires they may be returned, that he may communicate them to the Lords.—1 *Chandler*, 303.

SECTION XLVIII.

ASSENT.

The House which has received a bill, and passed it, may present it for the King's assent, and ought to do it, though they have not by message notified to the other their passage of it. Yet the notifying by message is a form which ought to be observed between the two Houses, from motives of respect and good understanding.—2 *Hats.* 242. Were the bill to be withheld from being presented to the King, it would be an infringement of the rules of Parliament.—2 *Hats.* 242.

When a bill has passed both Houses of Congress, the House last acting on it notifies its passage to the other, and delivers the bill to the

joint committee of enrolment, who see that it is truly enrolled in parchment.—(*Vide Joint Rules* 6.) When the bill is enrolled, it is not to be written in paragraphs, but solidly and all of a piece, that the blanks within the paragraphs may not give room for forgery.—9 *Grey*, 143. It is then put in the hands of the clerk of the House of Representatives, to have it signed by the Speaker. The clerk then brings it by way of message to the Senate, to be signed by their President. The Secretary of the Senate returns it to the committee of enrolment, who present it to the President of the United States. (*Vide Joint Rules* 8, 9.) If he approves, he signs and deposits it among the rolls in the office of the Secretary of State, and notifies by message the House in which it originated, that he has approved and signed it; of which that House informs the other by message. If the President disapproves, he is to return it, with his objections, to the House in which it shall have originated; who are to enter the objections at large on their journal, and proceed to re-consider it. If, after such re-consideration, two-thirds of the House shall agree to pass the bill, it shall be sent, together with the President's objections, to the other House, by which it shall likewise be re-considered, and, if approved by two-thirds of that House, it shall become a law. If any bill shall not be returned by the President within ten days (Sunday excepted,) after it shall have been presented to him, the same shall be a

law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law. *Const. U. S. Art. I. Sec.* 7.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment,) shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.—*Const. U. S. Art. I. Sec.* 7.

SECTION XLIX.

JOURNALS.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy.—*Const. I.* 5. 3.

The proceedings of the Senate, when not acting as in a committee of the House, shall be entered on the journals, as concisely as possible, care being taken to detail a true account of the proceedings. Every vote of the Senate shall be entered on the journals, and a brief statement of the contents of each petition, memorial, or pa-

per, presented to the Senate, be also inserted on the journals.—*Rule* 32.

The titles of bills, and such parts thereof only as shall be affected by proposed amendments, shall be inserted on the journals.—*Rule* 31.

If a question is interrupted by a vote to adjourn, or to proceed to the orders of the day, the original question is never printed in the journal, it never having been a vote, nor introductory to any vote: but when suppressed by the previous question, the first question must be stated, in order to introduce, and make intelligible, the second.—2 *Hats.* 83.

So also, when a question is postponed, adjourned, or laid on the table, the original question, though not yet a vote, must be expressed in the journals; because it makes part of the vote of postponement, adjourning, or laying on the table.

Where amendments are made to a question, those amendments are not printed in the journals, separated from the question; but only the question as finally agreed to by the House. The rule of entering in the journals only what the House has agreed to, is founded in great prudence and good sense; as there may be many questions proposed which it may be improper to publish to the world, in the form in which they are made.—2 *Hats.* 85.

In both Houses of Congress, all questions whereon the yeas and nays are desired by one-fifth of the members present, whether decided affirmatively or negatively, must be entered in the journals.—*Const. I.* 5. 3.

The first order for printing the votes of the House of Commons, was Oct. 30, 1685.—1 *Chandler*, 387.

Some judges have been of opinion, that the journals of the House of Commons are no records, but remembrances. But this is not law. *Cob.* 110, 111—*Lex. Parl.* 114, 115—*Jour. H. C. Mar.* 17, 1592—*Hale. Parl.* 105. For the Lords, in their House, have power of judicature; the Commons, in their House, have power of judicature; and both Houses together have power of judicature; and the book of the clerk of the House of Commons is a record, as is affirmed by act of Parliament.—6 *H.* 8. *c.* 16—*Inst.* 23, 24; and every member of the House of Commons has a judicial place.—4 *Inst.* 15. As records, they are open to every person; and a printed vote of either House is sufficient ground for the other to notice it. Either may appoint a committee to inspect the journals of the other, and report what has been done by the other in any particular case.—2 *Hats.* 261—3 *Hats.* 27–30. Every member has a right to see the journals, and to take and publish votes from them. Being a record, every one may see and publish them.—6 *Grey*, 118, 119.

On information of a mis-entry or omission of an entry in the journal, a committee may be appointed to examine and rectify it, and report it to the House.—2 *Hats.* 194, 5.

SECTION L.

ADJOURNMENT.

The two Houses of Parliament have the sole, separate, and independent power of adjourning, each their respective Houses. The King has no authority to adjourn them; he can only signify his desire, and it is in the wisdom and prudence of either House, to comply with his requisition, or not, as they see fitting.—2 *Hats.* 332. 1 *Blackstone*, 186. 5 *Grey*, 122.

By the Constitution of the United States, a smaller number than a majority may adjourn from day to day. —*I.* 5. But neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.—*I.* 5. The President may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper.—*Const. II.* 3.

A motion to adjourn simply, cannot be amended as by adding, "To a particular day." But must be put simply, "That this House do now adjourn?" and, if carried in the affirmative, it is adjourned to the next sitting day, unless it has come to a previous resolution, "That at its rising, it will adjourn to a particular day;" and then the House is adjourned to that day.—2 *Hats.* 82.

Where it is convenient that the business of the House be suspended for a short time, as for a conference presently to be held, &c. it adjourns during pleasure.—2 *Hats.* 305. Or for a quarter of an hour.—5 *Grey*, 331.

If a question be put for adjournment, it is no adjournment till the Speaker pronounces it.—5 *Grey*, 137. And from courtesy and respect, no member leaves his place till the Speaker has passed on.

SECTION LI.

A SESSION.

Parliament have three modes of separation, to wit, by adjournment, by prorogation, or dissolution by the King, or by the efflux of the term for which they were elected, Prorogation or dissolution constitutes there what is called a session; provided some act has passed. In this case, all matters depending before them are discontinued, and at their next meeting are to be taken up *de novo*, if taken up at all.—1 *Blackst.* 186. Adjournment, which is by themselves, is no more than a continuance at the session from one day to another, or for a fortnight, a month, &c. *ad libitum.* All matters depending remain

in *statu quo*, and when they meet again, be the term ever so distant, are resumed without any fresh commencement, at the point at which they were left.—1 *Lev.* 165—*Lex. Parl. c.* 2—1 *Ro. Rep.* 29—4 *Inst.* 7. 27, 28—*Hutt.* 61—1 *Mod.* 152—*Ruffh. Jac's. L. Dict. Parliaments* —*Blackst.* 186. Their whole session is considered in law but as one day, and has relation to the first day thereof.—*Bro. Abr. Parliament*, 86.

Committees may be appointed to sit during a recess by adjournment, but not by prorogation. 5 *Grey*, 374—9 *Grey*, 350—1 *Chandler*, 50. Neither House can continue any portion of itself in any Parliamentary function, beyond the end of the session, without the consent of the other two branches. When done, it is by a bill constituting them commissioners for the particular purpose.

Congress separate in two ways only, to wit, by adjournment, or dissolution by the efflux of their time. What then constitutes a session with them? A dissolution certainly closes one session, and the meeting of the new Congress begins another. The Constitution authorizes the President, "On extraordinary occasions, to convene both Houses, or either of them."—*Art. I. Sec.* 3. If convened by the President's proclamation, this must begin a new session, and of course determine the preceding one to have been a session. So, if it meets under the clause of the Constitution, which says, "The Congress shall assemble, at least, once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day,"—

I. 4.—this must begin a new session. For even if the last adjournment was to this day, the act of adjournment is merged in the higher authority of the Constitution, and the meeting will be under that, and not under their adjournment. So far we have fixed landmarks for determining sessions. In other cases, it is declared by the joint vote authorizing the President of the Senate, and the Speaker, to close the session on a fixed day, which is usually in the following form, "Resolved, by the Senate and House of Representatives, that the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session, by adjourning their respective Houses on the —— day of ——."

When it was said above, that all matters depending before Parliament were discontinued by the determination of the session, it was not meant for judiciary cases, depending before the House of Lords, such as impeachments, appeals, and writs of error. These stand continued of course to the next session.—*Raym.* 120. 381—*Ruffh. Jac. L. D. Parliament.*

Impeachments stand in like manner continued before the Senate of the United States.*

* It was held, in the case of Hastings, that a *dissolution* did not work the discontinuance of an impeachment.

SECTION LII.

TREATIES.

The President of the United States has power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur. —*Const. U. S. Art. II. Sec.* 2.

All confidential communications, made by the President of the United States to the Senate, shall be, by the members thereof, kept inviolably secret; and that all treaties, which may hereafter be laid before the Senate, shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy.—*Rule* 38.

Treaties are legislative acts. A treaty is a law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation. In all countries, I believe, except England, treaties are made by the legislative power: and there also, if they touch the laws of the land, they must be approved by Parliament. Ware *vs.* Hylton.—3 *Dallas's Rep.* 199. It is acknowledged, for instance, that the King of Great Britain cannot, by a treaty, make a citizen of an alien.—*Vattel, b.* 1. *c.* 19. *sec.* 214. An act of Parliament was necessary to validate the American treaty of 1783. And abundant examples of of such acts can be cited. In the case of the treaty of Utrecht, in 1712, the commercial articles required the concurrence of Parliament. But a bill brought in for that purpose was re-

jected. France, the other contracting party, suffered these articles, in practice, to be not insisted on, and adhered to the rest of the treaty.—4 *Russell's Hist. Mod. Europe*, 457—2 *Smollet*, 242. 246.

By the Constitution of the United States, this department of legislation is confined to two branches only, of the ordinary Legislature; the President originating, and Senate having a negative. To what subject this power extends, has not been defined in detail by the Constitution; nor are we entirely agreed among ourselves.—1. It is admitted, that it must concern the foreign nation, party to the contract, or it would be a mere nullity *res inter alias acta*.—2. By the general power to make treaties, the Constitution must have intended to comprehend only those subjects which are usually regulated by treaty, and cannot be otherwise regulated.—3. It must have meant to except out of these the rights reserved to the States; for surely the President and Senate cannot do by treaty what the whole Government is interdicted from doing in any way.—4. And also to except those subjects of legislation in which it gave a participation to the House of Representatives. This last exception is denied by some, on the ground that it would leave very little matter for the treaty power to work on. The less the better, say others. The Constitution thought it wise to restrain the Executive and Senate from entangling and embroiling our affairs with those of Europe. Besides, as the negociations are carried on by the Executive alone, the subjecting to the ratification of the Representatives such articles as are within their participation, is no more inconvenient than to the Senate. But the ground of this exception is denied as unfounded. For examine, *e. g.* the treaty of commerce with France, and it will be found that out of thirty-one articles, there are not more than small portions of two or three of them

which would not still remain as subjects of treaties, untouched by these exceptions.

Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the Legislature alone can declare them infringed and rescinded. This was accordingly the process adopted in the case of France, in 1798.

It has been the usage of the Executive, when it communicates a treaty to the Senate for their ratification, to communicate also the correspondence of the negotiations. This having been omitted in the case of the Prussian treaty, was asked by a vote of the House, of Feb. 12, 1800, and was obtained. And in Dec. 1800, the Convention of that year between the United States and France, with the report of the negotiations by the Envoys, but not their instructions, being laid before the Senate, the instructions were asked for, and communicated by the President.

The mode of voting on questions of ratification, is by nominal call.

Whenever a treaty shall be laid before the Senate for ratification, it shall be read a first time for information only; when no motion to reject, ratify, or modify the whole or any part, shall be received.

Its second reading shall be for consideration; and on a subsequent day, when it shall be taken up as in a committee of the whole, and every one shall be free to move a question on any particular article in this form, "Will the Senate advise and consent to the ratification of this article?" or to propose amendments thereto, either by inserting or by leaving out words, in which last case the question shall be, "Shall the words stand part of the article?" And in every of the said cases, the concurrence of two-thirds of the Senators present shall be requisite to decide affirmatively. And when through the whole, the proceedings shall be stated to the House, and questions be again severally put thereon for confirmation, or new ones proposed, requiring in like

manner a concurrence of two-thirds for whatever is retained or inserted.

The votes so confirmed shall, by the House, or a committee thereof, be reduced into the form of a ratification with or without modifications, as may have been decided, and shall be proposed on a subsequent day, when every one shall again be free to move amendments, either by inserting or leaving out words; in which last case the question shall be, "Shall the words stand part of the resolution?" And in both cases the concurrence of two-thirds shall be requisite to carry the affirmative: as well as on the final question to advise and consent to the ratification in the form agreed to.—*Rule* 37.

When any question may have been decided by the Senate, in which two-thirds of the members present are necessary to carry the affirmative, any member who voted on that side which prevailed in the question, may be at liberty to move for a re-consideration; and a motion for re-consideration shall be decided by a majority of votes.—*Rule* 44.

SECTION LIII.

IMPEACHMENT.

The House of Representatives shall have the sole power of impeachment.—*Const. U. S. Art. I. Sec.* 3.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United Ststes is tried, the Chief Justice shall preside: and no person shall be convicted without the concur-

rence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit, under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.—*Const. U. S. Art. I. Sec.* 3.

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.—*Const. U. S. Art. II. Sec.* 4.

The trial of crimes, except in cases of impeachment, shall be by jury.—*Const. U. S. Art. III. Sec.* 2.

These are the provisions of the Constitution of the United States on the subject of impeachments. The following is a sketch of some of the principles and practices of England on the same subject.

Jurisdiction.—The Lords cannot impeach any to themselves, nor join in the accusation, because they are judges.—*Seld. Judic. in Parl.* 12. 63. Nor can they proceed against a commoner but on complaint of the Commons.—*id.* 84. The Lords may not, by the law, try a commoner for capital offence, on the information of the King, or a private person; because the accused is entitled to a trial by his peers generally; but on accusation by the House of Commons, they may proceed against the delinquent, of whatsoever degree, and whatsoever be the nature of the offence; for there they do not assume to themselves trial at common law. The

Commons are then instead of a jury, and the judgment is given on their demand, which is instead of a verdict. So the Lords do only judge but not try the delinquent.—*id.* 6, 7. But Wooddeson denies that a commoner can now be charged capitally before the Lords, even by the Commons; and cites Fitzharris's case, 1681, impeached of high treason, where the Lords remitted the prosecution to the inferior court.—8 *Grey's Deb.* 325, 6, 7—2 *Wooddeson*, 601. 576—3 *Seld*, 1610. 1619. 1641—4 *Black.* 257—3 *Seld.* 1604. 1618, 9. 1656.

Accusation.—The Commons, as the grand inquest of the nation, become suitors for penal justice.—2 *Woodd.* 597—6 *Grey*, 356. The general course is to pass a resolution, containing a criminal charge against the supposed delinquent, and then to direct some member to impeach him by oral accusation, at the bar of the House of Lords, in the name of the Commons. The person signifies, that the articles will be exhibited, and desires that the delinquent may be sequestered from his seat, or be committed, or that the Peers will take order for his appearance.—*Sachev. Trial.* 325—2 *Woodd.* 602. 605—*Lords' Jour.* 3. *June*, 1701—1 *Wms.* 616—6 *Grey*, 324.

Process.—If the party do not appear, proclamations are to be issued, giving him a day to appear. On their return they are strictly examined. If any error be found in them, a new proclamation issues, giving a short day. If he

appear not, his goods may be arrested, and they may proceed.—*Seld. Jud.* 98, 99.

Articles.—The accusation (article) of the Commons, is substituted in place of an indictment. Thus, by the usage of Parliament in impreachment for writing or speaking, the particular words need not be specified.—*Sach. Tr.* 325—2 *Woodd.* 602. 605—*Lords' Journ.* 3. *June*, 1701—1 *Wms.* 616.

Appearance.—If he appears, and the case be capital, he answers in custody; though not if the accusation be general. He is not to be committed but on special accusations. If it be for a misdemeanor only, he answers, a Lord in his place, a Commoner at the bar, and not in custody, unless, on the answer, the Lords find cause to commit him till he find sureties to attend, and lest he should fly.—*Seld. Jud.* 98, 99. A copy of the articles is given him, and a day fixed for his answer.—*T. Ray*—1 *Rushw.* 268—*Fost.* 232—1 *Clar. Hist. of the Reb.* 379. On a misdemeanor, his appearance may be in person, or he may answer in writing, or by attorney.—*Seld. Jud.* 100. The general rule on an accusation for a misdemeanor is, that in such a state of liberty or restraint as the party is when the Commons complain of him, in such he is to answer.—*Seld. Jud.* 101. If previously committed by the Commons, he answers as a prisoner. But this may be called, in some sort, *judicium parium suorum.*—*Seld. Jud.* In misdemeanors, the party has a right to counsel

by the common law; but not in capital cases.—*Seld. Jud.* 102—5.

Answer.—The answer need not observe great strictness of form. He may plead guilty as to part, and defend as to the residue; or, saving all exceptions, deny the whole, or give a particular answer to each article separately.—1 *Rush.* 274—2 *Rush.* 1374—12 *Parl. Hist.* 442—3 *Lords' Journ.* 13 *Nov.* 1643—2 *Wood.* 607. But he cannot plead a pardon in bar to the impeachment.—2 *Wood.* 618—2 *St. Tr.* 735.

Replication, rejoinder, &c.—There may be a replication, rejoinder, &c.—*Seld. Jud.* 114—8 *Grey's Deb.* 233—*Sach. Tr.* 15—*Journ. H. of Commons*, 6 *March*, 1640, 1.

Witnesses.—The practice is to swear the witness in open House, and then examine them there: or a committee may be named, who shall examine them in committee either on interrogatories agreed on in the House, or such as the committee, in their discretion, shall demand. *Seld. Jud.* 120. 123.

Jury.—In the case of Alice Pierce, 1 *R.* 2. a jury was empannelled for her trial before a committee.—*Seld. Jud.* 123. But this was on a complaint, not on impeachment by the Commons.—*Seld. Jud.* 163. It must also have been for a misdemeanor only, as the Lords Spiritual sat in the case, which they do on misdemeanors, but not in capital cases.—*Seld. Jud.* 148. The judgment was a forfeiture of all her lands and

goods.—*Seld. Jud.* 188. This, Selden says, is the only jury he finds recorded in Parliament for misdemeanors; but he makes no doubt if the delinquent doth put himself on the trial of his country, a jury ought to be empannelled; and he adds, that it is not so on impeachment by the Commons; for they are in *oco proprio*, and here no jury ought to be empannelled.—*Id.* 124. The Lord Berkley, 6 *E.* 3. was arraigned for the murder of, *L.* 2. on an information on the part of the King, and not on impeachment of the Commons; for then they had been *patria sua.* He waived his peerage, and was tried by a jury of Gloucestershire and Warwickshire.—*Id.* 125. In one, 1 *H.* 7. the Commons protest that they are not to be considered as parties to any judgment given, or hereafter to be given in Parliament.—*Id.* 133. They have been generally, and more justly considered, as is before stated, as the grand jury. For the conceit of Selden is certainly not accurate, that they are the *patria sua* of the accused, and that the Lords do only judge, but not try. It is undeniable that they do try. For they examine witnesses as to the facts, and acquit or condemn according to their own belief of them. And Lord Hale says, 'the Peers are judges of law as well as of fact.'—2 *Hale, P. C.* 275. Consequently of fact as well as of law.

Presence of Commons.—The Commons are to be present at the examination of witnesses.—*Seld. Jud.* 124. Indeed, they are to attend

throughout, either as a committee of the whole House; or otherwise, at discretion, appoint managers to conduct the proofs.—*Rushw. Tr. of Straff.* 37—*Com. Journ.* 4 *Feb.* 1709, 10. 2 *Wood.* 614. And judgment is not to be given till they demand it.—*Seld. Jud.* 124. But they are not to be present on impeachment when the Lords consider of the answer or proofs, and determine of their judgment. Their presence, however, is necessary at the answer and judgment in cases capital.—*Id.* 58. 159; as well as not capital, 162. The Lords debate the judgment among themselves. Then the vote is first taken on the question of guilty or not guilty; and if they convict, the question, or particular sentence, is out of that which seemeth to be most generally agreed on.—*Seld. Jud.* 167—2 *Wood.* 612.

Judgment.—Judgments in Parliament, for death, have been strictly guided *per legem terræ*, which they cannot alter: and not at all according to their discretion. They can neither omit any part of the legal judgment, nor add to it. Their sentence must be *secundum, non ultra legem.*—*Seld. Jud.* 168, 169, 170, 171. This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevail. For impeachments were not framed to alter the law, but to carry it into more effectual execution against too powerful

delinquents. The judgment, therefore, is to be such as is warranted by legal principles or precedents.—6 *Sta. Tr.* 14—2 *Wood.* 611. The Chancellor gives judgments in misdemeanors; the Lord High Steward, formerly, in cases of life and death.—*Seld. Jud.* 180. But now the Steward is deemed not necessary.—*Fost.* 144—1 *Woodd.* 613. In misdemeanors, the greatest corporal punishment hath been imprisonment. —*Seld. Jud.* 184. The King's assent is necessary in capital judgments, (but 2 *Woodd.* 614. contra,) but not in misdemeanors.—*Seld. Jud.* 136.

Continuance.—An impeachment is not discontinued by the dissolution of Parliament; but may be resumed by the new Parliament.—*T. Ray.* 383—5 *Com. Jour.* 23 *Dec.* 1790—*Lords' Jour. May* 16, 1791—2 *Woodd.* 618.

RULES

FOR

CONDUCTING BUSINESS

IN THE

SENATE OF THE UNITED STATES.

---

1. The President having taken the chair, and a quorum being present, the journal of the preceding day shall be read, to the end that any mistake may be corrected that shall be made in the entries.

2. No member shall speak to another, or otherwise interrupt the business of the Senate, or read any newspaper, while the journals or public papers are reading, or when any member is speaking in any debate.

3. Every member, when he speaks, shall address the chair, standing in his place, and, when he has finished, shall sit down.

4. No member shall speak more than twice, in any one debate, on the same day, without leave of the Senate.

5. When two members rise at the same time, the President shall name the person to speak; but in all cases the member who shall first rise and address the chair, shall speak first.

6. When a member shall be called to order, by the President or a Senator, he shall sit down; and every question out of order shall be decided by the President without debate, subject to an appeal to the Senate; and the President may call for the sense of the Senate on any question of order.

7. If the member be called to order by a Senator for words spoken, the exceptionable words shall immediately be taken down in writing, that the President may be better enabled to judge of the matter.

8. No member shall absent himself from the service of the Senate, without leave of the Senate first obtained. And, in case a less number than a quorum of the Senate shall convene, they are hereby authorized to send the sergeant-at-arms, or any other person or persons by them authorized, for any or all absent members, as the majority of such members present shall agree, at the expense of such absent members, respectively, unless such excuse for non-attendance shall be made as the Senate, when a quorum is convened, shall judge sufficient; and, in that case, the expense shall be paid out of the contingent fund. And this rule shall apply as well to the first convention of the Senate, at the legal time of meeting, as to each day of the session,

after the hour has arrived to which the Senate stood adjourned.

9. No motion shall be debated until the same shall be seconded.

10. When a motion shall be made and seconded, it shall be reduced to writing, if desired by the President, or any member, delivered in at the table, and read, before the same shall be debated.

11. When a question is under debate, no motion shall be received but to adjourn, to lie on the table, to postpone indefinitely, to postpone to a day certain, to commit, or to amend; which several motions shall have precedence in the order they stand arranged, and the motion for adjournment shall always be in order, and be decided without debate.

12. If the question in debate contain several points, any member may have the same divided: but, on a motion to strike out and insert, it shall not be in order to move for a division of the question: but the rejection of a motion to strike out and insert one proposition shall not prevent a motion to strike out and insert a different proposition; nor prevent a subsequent motion, simply to strike out: nor shall the rejection of a motion, simply to strike out, prevent a subsequent motion to strike out and insert.

13. In filling up blanks, the largest sum and longest time shall be first put.

14. When the reading of a paper is first called for, and the same is objected to by any mem-

ber, it shall be determined by a vote of the Senate, and without debate.

15. The unfinished business in which the Senate was engaged at the last preceding adjournment, shall have the preference in the special orders of the day.

16. When the yeas and nays shall be called for by one-fifth of the members present, each member called upon shall, unless for special reason he be excused by the Senate, declare openly, and without debate, his assent or dissent to the question. In taking the yeas and nays, and upon the call of the House, the names of the members shall be taken alphabetically.

17. When the yeas and nays shall be taken upon any question, in pursuance of the above rule, no member shall be permitted, under any circumstances whatever, to vote after the decision is announced from the chair.

18. On a motion made and seconded to shut the doors of the Senate, on the discussion of any business which may, in the opinion of a member, require secrecy, the President shall direct the gallery to be cleared; and, during the discussion of such motion, the doors shall remain shut.

19. No motion shall be deemed in order, to admit any person or persons whatsoever within the doors of the Senate chamber to present any petition, memorial, or address, or to hear any such read.

20. When a question has been once made and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof: but no motion for the reconsideration of any vote shall be in order after a bill, resolution, message, report, amendment, or motion, upon which the vote was taken, shall have gone out of the possession of the Senate, announcing their decision; nor shall any motion for reconsideration be in order, unless made on the same day on which the vote was taken, or within the two next days of actual session of the Senate thereafter.

21. When the Senate are equally divided, the secretary shall take the decision of the President.

22. All questions shall be put by the President of the Senate, either in the presence or absence of the President of the United States, and the Senators shall signify their assent or dissent, by answering, ay or no.

23. The Vice-President, or President of the Senate pro tempore, shall have the right to name a member to perform the duties of the chair; but such substitution shall not extend beyond an adjournment.

24. Before any petition or memorial, addressed to the Senate, shall be received and read at the table, whether the same shall be introduced by the President or a member, a brief statement

of the contents of the petition or memorial shall verbally be made by the introducer.

25. One day's notice, at least, shall be given of an intended motion for leave to bring in a bill; and all bills reported by a committee shall, after the first reading, be printed for the use of the Senate: but no other paper or document shall be printed for the use of the Senate, without special order.

26. Every bill shall receive three readings previous to its being passed; and the President shall give notice at each, whether it be the first, second, or third; which readings shall be on three different days, unless the Senate unanimously direct otherwise. And all resolutions proposing amendments to the constitution, or to which the approbation and signature of the President may be requisite, or which may grant money out of the contingent, or any other fund, shall be treated in all respects, in the introduction and form of proceedings on them, in the Senate, in a similar manner with bills: and all other resolutions shall lie on the table one day for consideration, and also reports of committees.

27. No bill shall be committed or amended until it shall have been twice read, after which it may be referred to a committee.

28. All bills on a second reading shall first be considered by the Senate in the same manner as if the Senate were in committee of the whole, before they shall be taken up and proceeded on

by the Senate agreeably to the standing rules, unless otherwise ordered. And when the Senate shall consider a treaty, bill, or resolution, as in committee of the whole, the Vice-President, or President pro tempore, may call a member to fill the chair, during the time the Senate shall remain in committee of the whole: and the chairman so called shall, during such time, have the powers of a President pro tempore.

29. The final question, upon the second reading of every bill, resolution, constitutional amendment, or motion, originating in the Senate, and requiring three readings previous to being passed, shall be, "Whether it shall be engrossed and read a third time?" and no amendment shall be received for discussion at the third reading of any bill, resolution, amendment, or motion, unless by unanimous consent of the members present: but it shall at all times be in order, before the final passage of any such bill, resolution, constitutional amendment, or motion, to move its commitment; and should such commitment take place, and any amendment be reported by the committee, the said bill, resolution, constitutional amendment, or motion, shall be again read a second time, and considered as in committee of the whole, and then the aforesaid question shall be again put.

30. The special orders of the day shall not be called by the chair before one o'clock, unless otherwise directed by the Senate.

31. The titles of bills, and such parts thereof only as shall be affected by proposed amendments, shall be inserted on the journals.

32. The proceedings of the Senate, when not acting as in committee of the whole, shall be entered on the journal as concisely as possible, care being taken to detail a true and accurate account of the proceedings: but every vote of the Senate shall be entered on the journal, and a brief statement of the contents of each petition, memorial, or paper, presented to the Senate, shall also be inserted on the journal.

33. The following Standing Committees, to consist of five members each, shall be appointed at the commencement of each session, with leave to report by bill or otherwise.

A Committee on Foreign Relations.
A Committee on Finance.
A Committee on Commerce.
A Committee on Manufactures.
A Committee on Agriculture.
A Committee on Military Affairs.
A Committee on the Militia.
A Committee on Naval Affairs.
A Committee on Public Lands.
A Committee on Private Land Claims.
A Committee on Indian Affairs.
A Committee of Claims.
A Committee on the Judiciary.
A Committee on the Post Office and Post Roads.
A Committee on Roads and Canals.

A Committee on Pensions.

A Committee on the District of Columbia.

A Committee of three members, whose duty it shall be to audit and control the contingent expenses of the Senate.

And a Committee, consisting of three members, whose duty it shall be to examine all bills, amendments, resolutions, or motions, before they go out of possession of the Senate, and to make report that they are correctly engrossed, by delivery to the secretary; which report shall be entered on the journal.

34. In the appointment of the Standing Committees, the Senate will proceed, by ballot, severally, to appoint the chairman of each committee, and then, by one ballot, the other members necessary to complete the same; and a majority of the whole number of votes given shall be necessary to the choice of a chairman of a Standing Committee. All other committees shall be appointed by ballot, and a plurality of votes shall make a choice. When any subject or matter shall have been referred to a committee, any other subject or matter of a similar nature may, on motion, be referred to such committee.

35. When motions are made for reference of the same subject to a select committee, and to a standing committee, the question on reference to the standing committee shall be first put.

36. When nominations shall be made in writing by the President of the United States to

the Senate, a future day shall be assigned, unless the Senate unanimously direct otherwise, for taking them into consideration. When the President of the United States shall meet the Senate in the Senate Chamber, the President of the Senate shall have a chair on the floor, be considered as the head of the Senate, and his chair shall be assigned to the President of the United States. When the Senate shall be convened by the President of the United States to any other place, the President of the Senate and Senators shall attend at the place appointed. The secretary of the Senate shall also attend to take the minutes of the Senate.

37. Whenever a treaty shall be laid before the Senate for ratification, it shall be read a first time for information only; when no motion to reject, ratify, or modify, the whole, or any part, shall be received. Its second reading shall be for consideration, and on a subsequent day; when it shall be taken up, as in committee of the whole, and every one shall be free to move a question on any particular article, in this form: "Will the Senate advise and consent to the ratification of this article?" or to propose amendments thereto, either by inserting or by leaving out words; in which last case, the question shall be, "Shall these words stand as part of the article?" And in every of the said cases, the concurrence of two-thirds of the Senators present shall be requisite to decide affirmatively. And when through the whole, the proceedings shall

be stated to the House, and questions shall be again severally put thereon for confirmation, or new ones proposed, requiring, in like manner, a concurrence of two-thirds, for whatever is retained or inserted; the votes so confirmed shall, by the House, or a committee thereof, be reduced into the form of a ratification, with or without modifications, as may have been decided, and shall be proposed on a subsequent day, when every one shall again be free to move amendments, either by inserting or leaving out words; in which last case, the question shall be, "Shall these words stand as part of the resolution?" And in both cases, the concurrence of two-thirds shall be requisite to carry the affirmative, as well as, on the final question, to advise and consent to the ratification in the form agreed to.

38. All confidential communications, made by the President of the United States to the Senate, shall be by the members thereof kept secret; and all treaties which may be laid before the Senate shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy.

39. All information or remarks, touching or concerning the character or qualifications of any person nominated by the President to office, shall be kept secret.

40. When acting on confidential or executive business, the Senate shall be cleared of all persons, except the secretary, the principal or the

executive clerk, the sergeant-at-arms, and doorkeeper, and the assistant doorkeeper.

41. The legislative proceedings, the executive proceedings, and the confidential legislative proceedings, of the Senate, shall be kept in separate and distinct books.

42. The President of the United States shall, from time to time, be furnished with an authenticated transcript of the executive records of the Senate; and all nominations approved, or definitively acted on by the Senate, shall be returned by the secretary from day to day, as such proceedings may occur; but no further extract from the executive journal shall be furnished, except by special order; and no paper, except original treaties, transmitted to the Senate by the President of the United States, or any executive officer, shall be returned or delivered from the office of the secretary, without an order of the Senate for that purpose.

43. When an amendment to be proposed to the Constitution is under consideration, the concurrence of two-thirds of the members present shall not be requisite to decide any question for amendments, or extending to the merits, being short of the final question.

44. When any question may have been decided by the Senate, in which two-thirds of the members present are necessary to carry the affirmative, any member, who votes on that side which prevailed in the question, may be at liberty to move for a reconsideration; and a mo-

tion for reconsideration shall be decided by a majority of votes.

45. Messages shall be sent to the House of Representatives by the Secretary, who shall previously endorse the final determination of the Senate thereon.

46. Messengers are introduced in any state of business, except while a question is putting, while the yeas and nays are calling, or while the ballots are counting.

47. The presiding officer of the Senate shall have the regulation of such parts of the Capitol and of its passages, as are or may be set apart for the use of the Senate and its officers.

48. The secretary of the Senate, the sergeant-at-arms, and doorkeeper, and the assistant doorkeeper, shall be chosen on the second Monday of the first session of the 21st Congress, and on the same day of the first session of every succeeding Congress.

49. After the journal is read, the President shall first call for petitions, and then for reports from standing committees; and every petition or memorial, or other paper, shall be referred, of course, without putting a question for that purpose, unless the reference is objected to by a member at the time such petition, memorial, or other paper, is presented.

STANDING RULES AND ORDERS

FOR

CONDUCTING BUSINESS

IN THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES.

TOUCHING THE DUTY OF THE SPEAKER.

1. He shall take the chair every day precisely at the hour to which the House shall have adjourned on the preceding day; shall immediately call the members to order; and, on the appearance of a quorum, shall cause the Journal of the preceding day to be read.

2. He shall preserve order and decorum; may speak to points of order in preference to other members, rising from his seat for that purpose; and shall decide questions of order, subject to an appeal to the House by any two members, on which appeal no member shall speak more than once, unless by leave of the House.

3. He shall rise to put a question, but may state it sitting.

4. Questions shall be distinctly put in this form, to wit; "As many as are of opinion that (as the question may be) say Aye;" and, after the affirmative voice is expressed, "As many as are of the contrary opinion, say No." If the Speaker doubts, or a division be called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and afterwards those in the negative. If the Speaker still doubts, or a count be required, the Speaker shall name two members, one from each side, to tell the members in the affirmative, which being reported, he shall then name two others, one from each side, to tell those in the negative, which being also reported, he shall rise and state the decision to the House.

5. When any motion or proposition is made, the question, "Will the House now consider it?" shall not be put, unless it is demanded by some member, or is deemed necessary by the Speaker.

6. The Speaker shall examine and correct the Journal before it is read. He shall have a general direction of the Hall. He shall have a right to name any member to perform the duties of the chair, but such substitution shall not extend beyond an adjournment.

7. All committees shall be appointed by the Speaker, unless otherwise specially directed by the House. In which case they shall be ap-

pointed by ballot; and if, upon such ballot, the number required shall not be elected by a majority of the votes given, the House shall proceed to a second ballot, in which a plurality of votes shall prevail; and, in case a greater number than is required to compose or complete a committee shall have an equal number of votes, the House shall proceed to a further ballot or ballots.

8. In all other cases of ballot than for committees, a majority of the votes given shall be necessary to an election: and where there shall not be such a majority on the first ballot, the ballot shall be repeated until a majority be obtained.

9. In all cases of ballot by the House, the Speaker shall vote: in other cases he shall not vote, unless the House be equally divided, or unless his vote, if given to the minority, will make the division equal; and in case of such equal division, the question shall be lost.

10. In all cases where other than members of the House may be eligible to an office by the election of the House, there shall be a previous nomination.

11. All acts, addresses, and joint resolutions, shall be signed by the Speaker; and all writs, warrants, and subpœnas, issued by order of the House, shall be under his hand and seal, attested by the clerk.

12. In case of any disturbance or disorderly conduct in the galleries or lobby, the Speaker

(or Chairman of the Committee of the Whole House,) shall have power to order the same to be cleared.

13. No person, except members of the Senate, their Secretary, Heads of Departments, Treasurer, Comptroller, Register, Auditor, Postmaster General, President's Secretary, Chaplains to Congress, Judges of the United States, Foreign Ministers and their Secretaries, officers who, by name, have received, or shall hereafter receive, the thanks of Congress for their gallantry and good conduct displayed in the service of their country, the Commissioners of the Navy Board, Governor for the time being, of any State or Territory of the Union, who may attend at the Seat of the General Government during the session of Congress, and who may choose to avail himself of such privilege, such gentlemen as have been heads of Departments, or members of either branch of the Legislature, and, at the discretion of the Speaker, persons who belong to such Legislatures of foreign Governments as are in amity with the United States, shall be admitted within the Hall of the House of Representatives.

14. Stenographers, wishing to take down the debates, may be admitted by the Speaker, who shall assign such places to them, on the floor or elsewhere, to effect their object, as shall not interfere with the convenience of the House.

ORDER OF BUSINESS OF THE SESSION.

15. After six days from the commencement of a second or subsequent session of any Congress, all bills, resolutions, and reports, which originated in the House, and at the close of the next preceding session remained undetermined, shall be resumed and acted on in the same manner as if an adjournment had not taken place.

ORDER OF BUSINESS OF THE DAY.

16. As soon as the Journal is read, the Speaker shall call for petitions from the members of each State, and delegates from each Territory, beginning with Maine: and if, on any day, the whole of the States and Territories shall not to be called, the Speaker shall begin on the next day where he left off the previous day: Provided, That, after the first thirty days of the session, petitions shall not be received except on the first day of the meeting of the House in each week.

17. The petitions having been presented and disposed of, reports, first from the standing, and then from the select committees, shall be called for, and disposed of. Resolutions shall then be called for in the same order, and disposed of by the same rules which apply to petitions: Provided, that no member shall offer more than one resolution, or one series of resolutions, all relating to the same subject, until all the States and

Territories shall have been called. And after one hour shall have been devoted to reports from committees and resolutions, it shall be in order, pending the consideration or discussion thereof, to entertain a motion that the House do now proceed to dispose of the business on the Speaker's table, and to the orders of the day; which being decided in the affirmative, the Speaker shall dispose of the bills, messages, and communications on his table, and then proceed to call the orders of the day.

18. The business specified in the two preceding rules shall be done at no other part of the day, except by permission of the House.

LOCAL OR PRIVATE BUSINESS.

19. Friday and Saturday in every week shall be set apart for the consideration of private bills and private business, in preference to any other, unless otherwise determined by a majority of the House.

OF DECORUM AND DEBATE.

20. When any member is about to speak in debate, or deliver any matter to the House, he shall rise from his seat, and respectfully address himself to "Mr. Speaker," and shall confine himself to the question under debate, and avoid personality.

21. If any member, in speaking or otherwise,

transgress the rules of the House, the Speaker shall, or any member may, call to order; in which case the member so called to order shall immediately sit down, unless permitted to explain; and the House shall, if appealed to, decide on the case, but without debate: if there be no appeal, the decision of the chair shall be submitted to. If the decision be in favour of the member called to order, he shall be at liberty to proceed; if otherwise, he shall not be permitted to proceed without leave of the House; and, if the case require it, he shall be liable to the censure of the House.

22. When two or more members happen to rise at once, the Speaker shall name the member who is first to speak.

23. No member shall speak more than twice to the same question, without leave of the House, nor more than once until every member choosing to speak shall have spoken.

24. If a question pending be lost by adjournment of the House, and revived on the succeeding day, no member, who shall have spoken twice on the preceding day, shall be permitted again to speak without leave.

25. Whilst the Speaker is putting any question, or addressing the House, none shall walk out of or across the House; nor, in such case, or when a member is speaking, shall entertain private discourse; nor whilst a member is speaking, shall pass between him and the chair.

26. No member shall vote on any question

in the event of which he is immediately and particularly interested, or in any case where he was not present when the question was put.

27. Upon a division and count of the House on any question, no member without the bar shall be counted.

28. Every member who shall be in the House when the question is put shall give his vote, unless the House for special reasons, shall excuse him.

29. When a motion is made and seconded, it shall be stated by the Speaker; or, being in writing, it shall be handed to the chair, and read aloud by the clerk before debated.

30. Every motion shall be reduced to writing, if the Speaker or any member desire it.

31. After a motion is stated by the Speaker, or read by the clerk, it shall be deemed to be in the possession of the House, but may be withdrawn at any time before a decision or amendment.

32. When a question is under debate, no motion shall be received but to adjourn, to lie on the table, for the previous question, to postpone to a day certain, to commit or amend, to postpone indefinitely; which several motions shall have precedence in the order in which they are arranged: and no motion to postpone to a day certain, to commit, or to postpone indefinitely, being decided, shall be again allowed on the same day, and at the same stage of the bill or proposition. A motion to strike out the enacting

words of a bill shall have precedence of a motion to amend, and, if carried, shall be considered equivalent to its rejection.

33. When a resolution shall be offered, or a motion made, to refer any subject, and different committees shall be proposed, the question shall be taken in the following order:

The committee of the whole House on the state of the Union; the committee of the whole House; a standing committee; a select committee.

34. A motion to adjourn shall be always in order: that, and the motion to lie on the table, shall be decided without debate.

35. The previous question shall be in this form: "Shall the main question be now put?" It shall only be admitted when demanded by a majority of the members present; and, until it is decided, shall preclude all amendment, and further debate of the main question.

36. On a previous question there shall be no debate.

37. When a question is postponed indefinitely, the same shall not be acted upon again during the session.

38. Any member may call for the division of a question, which shall be divided if it comprehends questions so distinct, that, one being taken away, the rest may stand entire for the decision of the House: a motion to strike out being lost, shall preclude neither amendment nor a motion to strike out and insert.

39. Motions and reports may be committed at the pleasure of the House.

40. No motion or proposition on a subject, different from that under consideration, shall be admitted under colour of amendment.

41. When a motion has been once made and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof, on the same or the succeeding day: and such motion shall take precedence of all other questions, except a motion to adjourn.

42. When the reading of a paper is called for, and the same is objected to by any member, it shall be determined by a vote of the House.

43. The unfinished business in which the House was engaged at the last preceding adjournment, shall have the preference in the orders of the day; and no motion on any other business shall be received, without special leave of the House, until the former is disposed of.

44. Every order, resolution, or vote, to which the concurrence of the Senate shall be necessary, shall be read to the House, and laid on the table, on a day preceding that in which the same shall be moved, unless the House shall otherwise expressly allow.

45. Petitions, memorials, and other papers, addressed to the House, shall be presented by the Speaker, or by a member in his place: a brief statement of the contents thereof shall verbally

be made by the introducer, and shall not be debated or decided on the day of their being first read, unless where the House shall direct otherwise, but shall lie on the table, to be taken up in the order they were read.

46. A proposition requesting information from the President of the United States, or directing it to be furnished by the head of either of the Executive Departments, or by the Postmaster General, or to print an extra number of any document or other matter, excepting messages of the President to both Houses at the commencement of each session of Congress, and the reports and documents connected with, or referred to in it, shall lie on the table one day for consideration, unless otherwise ordered by the unanimous consent of the House; and all such propositions shall be taken up for consideration in the order they were presented, immediately after reports are called for from select committees; and, when adopted, the clerk shall cause the same to be delivered.

47. Any fifteen members (including the Speaker, if there be one) shall be authorized to compel the attendance of absent members.

48. Upon calls of the House, or in taking the yeas and nays on any question, the names of the members shall be called alphabetically.

49. Any member may excuse himself from serving on any committee at the time of his appointment, if he is then a member of two other committees.

50. No member shall absent himself from the service of the House unless he have leave, or be sick and unable to attend.

51. Upon the call of the House, the names of the members shall be called over by the clerk, and the absentees noted; after which the names of the absentees shall again be called over, the doors shall then be shut, and those for whom no excuse, or insufficient excuses are made, may, by order of those present, if fifteen in number, be taken into custody as they appear, or may be sent for and taken into custody, wherever to be found, by special messengers to be appointed for that purpose.

52. When a member shall be discharged from custody, and admitted to his seat, the House shall determine whether such discharge shall be with or without paying fees; and, in like manner, whether a delinquent member, taken into custody by a special messenger, shall, or shall not, be liable to defray the expense of such special messenger.

53. A sergeant-at-arms shall be appointed, to hold his office during the pleasure of the House, whose duty it shall be to attend the House during its sitting; to execute the commands of the House from time to time, together with all such process, issued by authority thereof, as shall be directed to him by the Speaker.

54. The fees of the sergeant-at-arms shall be, for every arrest, the sum of two dollars; for each day's custody and releasement, one dollar;

and for travelling expenses for himself or special messenger, going and returning, one-tenth of a dollar per mile.

55. Twenty-three standing committees shall be appointed at the commencement of each session, viz:

A Committee of Elections,	To consist of seven Members each.
A Committee of Ways and Means,	
A Committee of claims,	
A Committee of Commerce,	
A Committee on the Public Lands,	
A Committee on the Post office and Post Roads,	
A Committee for the District of Columbia,	
A Committee on the Judiciary,	
A Committee on Revolutionary Claims,	
A Committee on Public Expenditures,	
A Committe on Private Land Claims,	
A Committee on Manufactures,	
A Committee on Agriculture,	
A Committee on Indian Affairs,	
A Committee on Military Affairs,	
A Committee on Naval Affairs,	
A Committee on Foreign Affairs,	
A Committee on the Territories,	
A Committee on Revolutionary Pensions,	
A Committee on Invalid Pensions,	
A Committee on Roads and Canals,	
A Committee of Revisal and Unfinished Business, and	To consist of three Members each.
A Committee of Accounts,	

It shall be the duty of the Committee of Elections to examine and report upon the certificates

of election, or other credentials, of the members returned to serve in this House, and to take into their consideration all such petitions, and other matters touching elections and returns, as shall or may be presented, or come into question, and be referred to them by the House.

57. It shall be the duty of the Committee of Ways and Means to take into consideration all such reports of the Treasury Department, and all such propositions relative to the revenue, as may be referred to them by the House; to inquire into the state of the public debt or the revenue, and of the expenditure; and to report, from time to time, their opinion thereon; to examine into the state of the several public Departments, and particularly into the laws making appropriations of moneys; and to report whether the moneys have been disbursed conformably with such laws; and, also, to report, from time to time, such provisions and arrangements as may be necessary to add to the economy of the Departments, and the accountability of their officers.

In preparing bills of appropriation for other objects, the Committee of Ways and Means shall not include appropriations for carrying into effect treaties made by the United States; and, where an appropriation bill shall be referred to them, for their consideration, which contains appropriations for carrying a treaty into effect, and for other objects, they shall propose such amendments as shall prevent appropriations for carrying a treaty

into effect, being included in the same bill with the appropriations for other objects.

58. It shall be the duty of the Committee of Claims to take into consideration all such petitions and matters or things touching claims and demands on the United States, as shall be presented, or shall or may come in question, and be referred to them by the House; and to report their opinion thereupon, together with such propositions for relief therein, as to them shall seem expedient.

59. It shall be the duty of the Committee of Commerce to take into consideration all such petitions and matters or things touching the commerce of the United States, as shall be presented, or shall or may come into question, and be referred to them by the House; and to report, from time to time, their opinion thereon.

60. It shall be the duty of the Committee on the Public Lands to take into consideration all such petitions and matters or things respecting the lands of the United States, as shall be presented, or shall or may come in question, and be referred to them by the House; and to report their opinion thereupon, together with such propositions for relief thereof as to them shall seem expedient.

61. It shall be the duty of the Committee on the Post Office and Post Roads to take into consideration all such petitions and matters or things touching the Post Office and Post Roads, as shall be presented, or may come in question,

and be referred to them by the House; and to report their opinion thereupon, together with such propositions relative thereto as to them shall seem expedient.

62. It shall be the duty of the Committee for the District of Columbia to take into consideration all such petitions, matters, or things, touching the said District, as shall be presented, or shall come in question, and be referred to them by the House; and to report their opinion thereon, together with such propositions relative thereto as to them shall seem expedient.

63. It shall be the duty of the Committee on the Judiciary to take into consideration such petitions, and matters or things, touching judicial proceedings, as shall be presented, or may come in question, and be referred to them by the House; and to report their opinion thereupon, together with such propositions relative thereto as to them shall seem expedient.

64. It shall be the duty of the Committee on Revolutionary Claims to take into consideration all such petitions and matters or things, touching claims and demands originating in the revolutionary war, or arising therefrom, as shall be presented, or shall or may come in question, and be referred to them by the House; and to report their opinion thereupon, together with such propositions for relief therein, as to them shall seem expedient.

65. It shall be the duty of the Committee on Public Expenditures to examine into the state

of the several public Departments, and particularly into laws making appropriations of moneys, and to report whether the moneys have been disbursed conformably with such laws; and, also, to report, from time to time, such provisions and arrangements as may be necessary to add to the economy of the Departments, and the accountability of their officers.

66. It shall be the duty of the Committee on Private Land Claims to take into consideration all claims to land which may be referred to them, or shall or may come in question, and to report their opinion thereupon, together with such propositions for relief therein as to them shall seem expedient.

67. It shall be the duty of the Committee on Military Affairs to take into consideration all subjects relating to the military establishment and public defence, which may be referred to them by the House, and to report their opinion thereupon; and, also, to report, from time to time, such measures as may contribute to economy and accountability in the said establishment.

68. It shall be the duty of the Committee on Naval Affairs to take into consideration all matters which concern the naval establishment, and which shall be referred to them by the House, and to report their opinion thereupon; and, also, to report, from time to time, such measures as may contribute to economy and accountability in the said establishment.

69. It shall be the duty of the Committee on

Foreign Affairs to take into consideration all matters which concern the relations of the United States with foreign nations, and which shall be referred to them by the House, and to report their opinion on the same.

70. It shall be the duty of the Committee on the Territories to examine into their legislative, civil and criminal proceedings, and to devise and report to the House such means as, in their opinion, may be necessary to secure the rights and privileges of residents and non-residents.

71. It shall be the duty of the Committee on Revolutionary Pensions to take into consideration all such matters respecting pensions for services in the revolutionary war, other than Invalid Pensions, as shall be referred to them by the House.

72. It shall be the duty of the Committee on Invalid Pensions, to take into consideration all such matters respecting Invalid Pensions, as shall be referred to them by the House.

73. It shall be the duty of the Committee on Roads and Canals to take into consideration all such petitions, and matters or things, relating to Roads and Canals, and the improvement of the navigations of Rivers, as shall be presented, or may come in question, and be referred to them by the House, and to report thereupon, together with such propositions relative thereto, as to them shall seem expedient.

74. It shall be the duty of the Committee of Revisal and Unfinished Business to examine

and report what laws have expired, or are near expiring, and require to be revived or further continued; also, to examine and report, from the Journal of the last session, all such matters as were then depending and undetermined.

75. It shall be the duty of the Committee of Accounts to superintend and control the expenditures of the contingent fund of the House of Representatives, and to audit and settle all accounts which may be charged thereon: and, also, to audit the accounts of the members for their travel to and from the seat of Government, and their attendance in the House.

76. Six additional Standing Committees shall be appointed at the commencement of the first session in each Congress, whose duty shall continue until the first session of the ensuing Congress.

1. A committee on so much of the public accounts and expenditures as relate to the Department of State;
2. A committee on so much of the public accounts and expenditures as relate to the Treasury Department;
3. A committee on so much of the public accounts and expenditures as relate to the Department of War;
4. A committee on so much of the public accounts and expenditures as relate to the Department of the Navy;
5. A committee on so much of the public accounts and expenditures as relate to the Post Office; and
6. A committee on so much of the public accounts and expenditures as relate to the Public Buildings;

To consist of three members each.

77. It shall be the duty of the said Committees to examine into the state of the accounts and expenditures respectively submitted to them, and to inquire and report particularly—

Whether the expenditures of the respective Departments are justified by law:

Whether the claims, from time to time, satisfied and discharged by the respective Departments, are supported by sufficient vouchers, establishing their justness both as to their character and amount:

Whether such claims have been discharged out of funds appropriated therefor; and whether all moneys have been disbursed in conformity with appropriation laws: and

Whether any, and what, provisions are necessary to be adopted, to provide more perfectly for the proper application of the public moneys, and to secure the Government from demands unjust in their character, or extravagant in their amount.

And it shall be, moreover, the duty of the said Committees to report, from time to time, whether any, and what, retrenchment can be made in the expenditures of the several Departments, without detriment to the public service; whether any, and what, abuses at any time exist in the failure to enforce the payment of moneys which may be due to the United States from public defaulters or others; and to report, from time to time, such provisions and arrangements as may be necessary to add to the econo-

my of the several Departments, and the accountability of their officers.

78. The several Standing Committees of the House shall have leave to report by bill or otherwise.

79. No committee shall sit during the sitting of the House, without special leave.

80. The clerk of the House shall take an oath for the true and faithful discharge of the duties of his office, to the best of his knowledge and abilities, and shall be deemed to continue in office until another be appointed.

81. It shall be the duty of the clerk to make, and cause to be printed and delivered to each member, at the commencement of every session of Congress, a list of the reports which it is the duty of any officer or Department of the Government to make to Congress: referring to the act or resolution, and page of the volume of the Laws and Journal in which it may be contained; and placing under the name of each officer the list of reports required of him to be made, and the time when the report may be expected.

82. It shall be the duty of the clerk of the House, at the end of each session, to send a printed copy of the Journals thereof to the Executive, and to each branch of the Legislature of every State.

83. All questions of order shall be noted by the clerk, with the decision, and put together at the end of the Journal of every session.

84. Whenever confidential communications

are received from the President of the United States, the House shall be cleared of all persons, except the members, Clerk, Sergeant-at-Arms, and Doorkeeper, and so continue during the reading of such communications, and (unless otherwise directed by the House) during all debates and proceedings to be had thereon. And when the Speaker, or any other member, shall inform the House that he has communications to make, which he conceives ought to be kept secret, the House shall, in like manner, be cleared, till the communication be made; the House shall then determine whether the matter communicated requires secrecy or not, and take order accordingly.

85. The Sergeant-at-arms and the Doorkeeper shall be sworn to keep the secrets of the House.

86. All questions relating to the priority of business to be acted on shall be decided without debate.

OF BILLS.

87. Every bill shall be introduced by motion for leave, or by an order of the House, on the report of the committee; and, in either case, a committee to prepare the same shall be appointed. In cases of a general nature one day's notice at least shall be given of the motion to bring in a bill; and every such motion may be committed.

88. Every bill shall receive three several

readings in the House previous to its passage; and all bills shall be dispatched in order as they were introduced, unless where the House shall direct otherwise; but no bill shall be twice read on the same day, without special order of the House.

89. The first reading of a bill shall be for information; and, if opposition be made to it, the question shall be, "Shall this bill be rejected?" If no opposition be made, or if the question to reject be negatived, the bill shall go to its second reading without a question.

90. Upon the second reading of a bill, the Speaker shall state it as ready for commitment or engrossment; and, if committed, then a question shall be, whether to a select or standing committee, or to a committee of the whole House: if to a committee of the whole House, the House shall determine on what day. But, if the bill be ordered to be engrossed, the House shall appoint the day when it shall be read the third time.

91. Not more than three bills, originating in the House, shall be committed to the same committee of the whole; and such bills be analogous in their nature, which analogy shall be determined by the Speaker

92. After commitment and report thereof to the House, or at any time before its passage, a bill may be recommitted.

93. All bills ordered to be engrossed shall be executed in a fair round hand.

94. No amendment by way of *rider*, shall be received to any bill on its third reading.

95. When a bill shall pass, it shall be certified by the Clerk, noting the day of its passage at the foot thereof.

OF COMMITTEES OF THE WHOLE HOUSE.

96. It shall be a standing order of the day, throughout the session, for the House to resolve itself into a committee of the whole House on the State of the Union.

97. In forming a committee of the whole House, the Speaker shall leave his chair, and a Chairman to preside in committee, shall be appointed by the Speaker.

98. Upon bills committed to a committee of the whole House, the bill shall be first read throughout by the clerk, and then again read and debated by clauses, leaving the preamble to be last considered; the body of the bill shall not be defaced or interlined, but all amendments, noting the page and line, shall be duly entered by the clerk on a separate paper, as the same shall be agreed to by the committee, and so reported to the House. After report, the bill shall again be subject to be debated and amended by clauses, before a question to engross it be taken.

99. All amendments made to an original motion in committee, shall be incorporated with the motion, and so reported.

100. All amendments made to a report com-

mitted to a committee of the whole House shall be noted and reported, as in case of bills.

101. All questions, whether in committee or in the House, shall be propounded in the order in which they were moved, except that, in filling up blanks, the largest sum and longest time shall be first put.

102. No motion or proposition for a tax or charge upon the people shall be discussed the day in which it is made or offered; and every such proposition shall receive its first discussion in a committee of the whole House.

103. No sum or quantum of tax or duty, voted by a committee of the whole House, shall be increased in the House until the motion or proposition for such increase shall be first discussed and voted in a committee of the whole House; and so in respect to the time of its continuance.

104. All proceedings, touching appropriations of money, shall be first discussed in a committee of the whole House.

105. The rules of proceedings in the House shall be observed in a committee of the whole House, so far as they may be applicable, except the rule limiting the time of speaking; but no member shall speak twice to any question, until every member choosing to speak shall have spoken.

106. No standing rule or order of the House shall be rescinded or changed without one day's notice being given of the motion therefor. Nor shall any rule be suspended, except by a vote of

at least two-thirds of the members present. Nor shall the order of business, as established by the rules of the House, be postponed or changed, except by a vote of at least two-thirds of the members present.

107. It shall be in order for the Committee on Enrolled Bills to report at any time.

108. No person shall be permiited to perform divince service in the chamber occupied by the House of Representatives, unless with the consent of the Speaker.

109. The rule for paying witnesses summoned to appear before this House, or either of its committees, shall be as follows: for each day a witness shall attend, the sum of two dollars; for each mile he shall travel in coming to, or going from, the place of examination, the sum of ten cents each way; but nothing shall be paid for travelling home when the witness has been summoned at the place of trial.

110. The clerk shall, within thirty days after the close of each session of Congress, cause to be completed the printing and primary distribution to members and delegates, of the journal of the House, together with an accurate index to the same.

JOINT RULES

OF THE TWO HOUSES.

1. In every case of an amendment of a bill, agreed to in one House, and dissented to in the other, if either House shall request a conference, and appoint a committee for that purpose, and the other House shall also appoint a committee to confer, such committee shall, at a convenient hour, to be agreed on by their chairman, meet in the conference chamber, and state to each other, verbally, or in writing, as either shall choose, the reasons of their respective Houses for and against the amendment, and confer freely thereon.

2. When a message shall be sent from the Senate to the House of Representatives, it shall be announced at the door of the House by the doorkeeper, and shall be respectfully communicated to the chair, by the person by whom it may be sent.

3. The same ceremony shall be observed when a message shall be sent from the House of Representatives to the Senate.

4. Messages shall be sent by such persons as sense of propriety in each House may determine to be proper.

5. While bills are on their passage between the two Houses, they shall be on paper, and under the signature of the secretary or clerk of each House, respectively.

6. After a bill shall have passed both Houses, it shall be duly enrolled on parchment, by the clerk of the House of Representatives, or the secretary of the Senate, as the bill may have originated in the one or the other House, before it shall be presented to the President of the United States.

7. When bills are enrolled, they shall be examined by a joint committee of two from the Senate, and two from the House of Representatives, appointed as a standing committee for that purpose, who shall carefully compare the enrolment with the engrossed bills as passed in the two Houses, and, correcting any errors that may be discovered in the enrolled bills, make their report forthwith to their respective Houses.

8. After examination and report, each bill shall be signed in the respective Houses, first by the Speaker of the House of Representatives, then by the President of the Senate.

9. After a bill shall have been thus signed in each House, it shall be presented by the said committee to the President of the United States for his approbation, it being first endorsed on the back of the roll, certifying in which House the same originated; which endorsement shall be signed by the secretary or clerk (as the case may be) of the House in which the same did

originate, and shall be entered on the journal of each House. The said committee shall report the day of presentation to the President, which time shall also be carefully entered on the journal of each House.

10. All orders, resolutions, and votes, which are to be presented to the President of the United States for his approbation, shall, also, in the same manner, be previously enrolled, examined, and signed, and shall be presented in the same manner, and by the same committee, as provided in cases of bills.

11. When the Senate and House of Representatives shall judge it proper to make a joint address to the President, it shall be presented to him in his audience chamber, by the President of the Senate, in the presence of the Speaker and both Houses.

12. When a bill or resolution, which shall have passed in one House, is rejected in the other, notice thereof shall be given to the House in which the same may have passed.

13. When a bill or resolution which has been passed in one House, shall be rejected in the other, it shall not be brought in during the same session, without a notice of ten days, and leave of two-thirds of that House in which it shall be renewed.

14. Each House shall transmit to the other all papers on which any bill or resolution shall be founded.

15. After each House shall have adhered to

their disagreement, a bill or resolution shall be lost.

16. No bill that shall have passed one House, shall be sent for concurrence to the other, on either of the three last days of the session.

17. No bill or resolution that shall have passed the House of Representatives and the Senate, shall be presented to the President of the United States, for his approbation, on the last day of the session.

18. When bills which have passed one House are ordered to be printed in the other, a greater number of copies shall not be printed than may be necessary for the use of the House making the order.

YC191538

LIBRARY OF THE UNIVERSITY OF CALIFORNIA

LIBRARY OF THE UNIVERSITY OF CALIFORNIA